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IFAR Journal

INTERNATIONAL FOUNDATION FOR ART RESEARCH

CHINA'S REQUEST TO THE U.S.
PRO & CON

A CLOSER LOOK AT THE SAKHAI ART SCAM

INCORPORATING STOLEN ART ALERT

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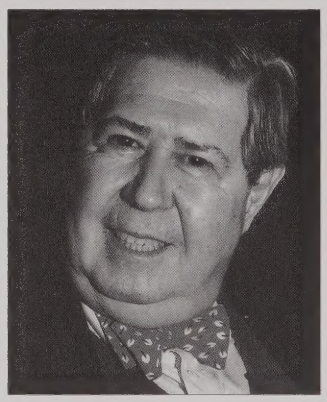
COVER: Marble wall panel from the Five Dynasties (906-960 A.D.) tomb of Wang Chuzhi looted in 1994 and returned to China in 2001 after it turned up at auction in New York. Ht.: 44 1/2" (113 cm). © Christie's Images Incorporated 2004/05. Story begins on p. 20.

IN MEMORIAM

STEPHEN E. WEIL

It is hard to imagine a person who more epitomized the marriage of art and the law than Steve Weil.

Trained as a lawyer and interested in intellectual pursuits, Steve early recognized that his abilities and interests would be better served in the art world and that a niche would be found. And it was. His knowledge, tact, wit and unfailing good sense made him invaluable to a wide range of persons who had to deal with artists, collectors, and others involved in the administration of art institutions. At the Marlborough Gallery, the Whitney Museum, the Hirschhorn Museum, and finally as Emeritus Senior Scholar at the Smithsonian, he developed an expertise that made him unique in the art world.



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WE WILL MISS YOU

When I first introduced Steve to IFAR more than twenty-five years ago, he immediately saw the virtues of the organization and welcomed becoming an early member of the board, serving until 1994. He remained a member of the Law Advisory Council until his death. Over the years, each executive director would call upon him for advice, recognizing that only Steve Weil's varied experience could provide the wisdom and practical answer that was required.

Steve was one of the first persons I would invite each semester to speak to my class in Art Law at Columbia Law School, where I taught for over twenty years. He shared experiences in the "real world" that one could not obtain in law school or even in private practice. Steve never finished a paragraph without making the listener smile, if not laugh.

In 1986, Steve and I completed the collaboration on a book, *Art Law*, which happily went on to win a prize as the best law book published in that year. A collaboration is a telling way to learn about the collaborator. Steve in Washington, and I in New York, would exchange drafts, and he would calmly suggest some revisions. In almost three years of working together on the project, I never heard a harsh word or encountered a bad temper, only amusing anecdotes and jokes, sprinkled with wisdom. It seemed to me that he was the spoke of an art wheel, where titillating art stories would come his way. And there were many.

Steve essentially founded the ALI-ABA, the collaborative venture between the American Law Institute and the American Bar Association. Annually until last year – when illness prevented his attending – he would, at the conferences, deliver a report summarizing the yearly developments in art law. And fittingly, this year at the conference, a special tribute was paid to Steve.

Over the years, Steve gave extensively to the business of IFAR, writing many articles for it publications, several of which were republished in his anthologies. In April 2000, he gave one of the keynote talks at IFAR's Provenance and Due Diligence Conference. In 2002, he and I participated in IFAR's program on copyright issues.

Most recently, and representing a particularly big loss for IFAR, Steve was one of the main legal advisors to IFAR's ambitious new Art Law / Cultural Property Website Initiative

Steve made a special contribution to art and the law. He did find his niche, and will be irreplaceable. With warmth and good humor, he taught us all. We will miss him.

FRANKLIN FELDMAN
CHAIR, LAW ADVISORY COUNCIL, IFAR

Christie's Wins Appeal Against Thomson:
They Urn-ed It!

A multi-million dollar dispute over two urns that began with a 1994 auction in London and led to a highly publicized lawsuit was finally settled this spring in a British appeals court. [1]

The winner: Christie's of London. The loser: heiress Taylor Thomson, whose father is reputedly the richest man in Canada. The conclusion: there may be a great difference between 18th and 19th century decorative objects, but Christie's did not have a "duty of care" to tell that to Thomson.

In May, a British appeals court overturned a lower court ruling that had gone in Ms. Thomson's favor. At stake was the difference between what Thomson paid for the two urns and what some experts ultimately said the urns were really worth.[2]

The appeals court said that, despite Thomson's "special client" relationship with Christie's, the auction house did not owe her a "duty of care" to tell her that it was sometimes difficult to distinguish 18th century Louis XV from 19th century French Empire objects and that the lower court was wrong in saying that it did. Had the lower court decision been upheld, it would likely have had major ramifications for the auction trade and the way they treat their "special clients." At issue, too, were the standards that auction houses need to use in describing items in their sales catalogues.

FIGURE 1. Pair of porphyry and gilt-handled urns sold at Christie's, London, December 1994.

At a Christie's auction in 1994 (December 8, lot #56), the urns were sold to Ms. Thomson as 18th century Louis XV, but Ms. Thomson later said they were 19th century. (See *IFAR Journal*, Vol. 7, no. 1, p.8.) The difference in centuries has considerable marketplace implications.

Thomson bought the urns – made of gilt and porphyry (purple stone) – at the auction for £1.97 million British pounds (approximately $3.3 million). The price was considerably higher than the pre-sale estimate of £400,000-600,000 because of a bidding war between Thomson and another client, Ann Getty. It was also considerably higher than the approximate £25,000 the urns were worth as 19th century copies.

Lacking space for the urns, Thomson kept them in storage at Christie's. They were still there four years later – 1998 – when Thomson heard questions about the actual date of the urns. She brought her concerns to Christie's. Christie's held fast to its opinion that the urns were 18th century. Technical tests undertaken by the auction house suggested the urns might after all be 19th century, but Christie's initially withheld that information from her. The tests were later discredited. Unable to get Christie's to rescind the sale, Thomson sued.

Thomson – the daughter of the Canadian media tycoon, Kenneth Thomson – told the court that she had relied on Christie's pre-sale advice and that she would not have purchased the vases had she known of the risks involved in distinguishing 18th from 19th century works.

[1] *Taylor Thomson v. Christie Manson & Woods Ltd., Christie's Fine Art Security Services, Ltd., David George Philip Cholmondeley*, HQ01X05244.

[2] In fact, the amount that Christie's would have owed was not determined by the lower court. The amount was complicated by the need to factor in the lower court's finding that there was a 70% probability that Christie's 18th century attribution was correct.

During the trial, eight experts offered conflicting opinions as to the dating of the urns. The judge concluded that there was a 70% likelihood that the urns dated to the 18th century. So the 18th century dating in the sale catalogue was therefore reasonable and within Christie's right as "experts," but it had established a "special client" relationship with Thomson and, as such, it owed her a higher standard of care. It should have informed her, the lower court said, of the difficulty involved in distinguishing between the two periods.

The appeals court disagreed. It said that the evidence was sufficiently strong to believe the works were 18th century and Christie's was entitled to be "justifiably confident" in its catalogue description. Moreover, if Christie's was not wrong in its catalogue description, it didn't breach any duty owed to Thomson. The auction house, it said, couldn't be correct for one and negligent to the other. In saying it *could* be, the lower court was wrong.

The game is not yet over, however. The next step for Ms. Thomson is an appeal to the House of Lords, but to do that, she needs leave to appeal from the House itself. Her London attorneys (at Herbert Smith, LLP) tell IFAR that they have applied to the House and are awaiting an answer, which they expect to receive in September or October.

— S.F.

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Settlement over Picasso's *Woman in White*

Collector Marilynn Alsdorf and Claimant Thomas Bennigson Come to Terms

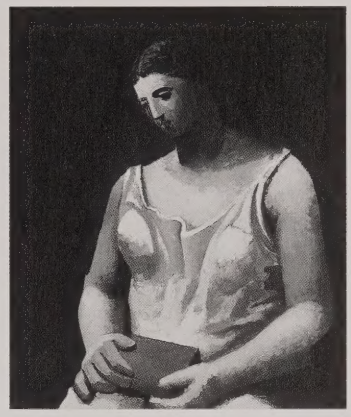
Pablo Picasso's *Femme en Blanc (Woman in White)* was painted in 1922, during the artist's so-called "classical period" following the First World War. And for close to three years now, the painting has been embroiled in an ownership dispute whose origins lie in the turmoil of the Second World War, whose consequences still linger.

That dispute – between a prominent Chicago collector, Marilynn Alsdorf, who purchased the work from a New York gallery almost thirty years ago, and Thomas Bennigson, the grandson of the pre-WWII owner, who sent the painting to France when she left Germany to escape the Nazis – seems finally to be settled, once and for all.

The battle involved courts in three jurisdictions. In the end, the Settlement, announced on August 8, 2005, was reached through court mediation. But even at that, legal title won't be final until public notice is given in four major newspapers[1] for six weeks to make sure that no other claimants exist – and a Consent Judgment is then entered by the U.S. District Court in Los Angeles.

At that point, the first of two payments will be made by Mrs. Alsdorf. The first payment – $4 million – will be paid ten days after the Consent Judgment is entered, in early November. The second payment – $2.5 million – will be paid either one year from the Consent Judgment, or when Mrs. Alsdorf sells the painting to a third party, whichever comes first.

In sum, Marilynn Alsdorf will pay $6.5 million to Thomas Bennigson to acquire full and undisputed title to the painting. The $6.5 million price was reached after Sotheby's appraised the work at $12 million ($2 million more than a buyer is said to have been willing to pay in 2002 and also than Mr. Bennigson had sought initially). The payment includes fees that Bennigson will have to pay to the Art Loss Register and to his attorney.



Pablo Picasso, *Femme en Blanc (Woman in White)*, oil on canvas, 25 1/2 x 21 inches, signed and dated 1922. ©2005 Estate of Pablo Picasso /Artists Rights Society (ARS), New York.

As part of a separate – and prior – agreement, Bennigson will also get a financial settlement from Stephen Hahn, the art dealer who sold the painting to Mrs. Alsdorf and her husband. This additional payment will be equal to the profit Hahn derived from the sale.

THE CLAIM

Marilynn Alsdorf and her husband, James (who was a member of IFAR's Board of Directors from 1987 until his death in 1990) purchased the painting in 1976[2] for $357,000 from the Stephan Hahn Gallery in New York. The painting has since hung in the Alsdorf home in suburban Chicago and, then, in Mrs. Alsdorf's Chicago apartment.

It was never lent for exhibition until 2001, when it was sent for a month to a Los Angeles dealer, David Tunkl. In 2002, Tunkl told Alsdorf that he knew of a potential purchaser in Europe, and Alsdorf agreed to send the

[1] The four newspapers are: *The New York Times, Frankfurter Allgemeine, Le Monde*, and *The Financial Times*.

[2] The invoice was dated January 7, 1976.

work to the free port in Geneva, Switzerland for viewing. While there, a French dealer interested in the work for a client, did a routine due diligence search with the Art Loss Register (ALR), resulting in a match with a Picasso listed in a 1947 publication of works reported looted during WWII.[3]

The ALR informed the dealer and Alsdorf of the match, although there was some confusion initially as to the pre-war owner and current heir. (The ALR at first said that the heir was a Swiss Foundation.)[4] Alsdorf hired an attorney to negotiate a settlement, but the talks later broke off.

Eventually, however, the pre-war owner was determined to be Carlota Landsberg, who fled Germany in 1938. Her only heir was a grandson, Thomas C. Bennigson, an Oakland, California resident who at the time was a law student at the University of California at Berkeley.[5]

In 1938, Landsberg sent the Picasso to a dealer, Justin Thannhauser, in Paris for safekeeping. But Thannhauser, who was also Jewish, left Paris when the Nazis occupied France. While gone, his house – including the Picasso – was emptied, apparently looted by the Nazis. Landsberg came to the U.S. around 1940/41. She was married in the U.S. and that is where her grandson, Bennigson, was born. After the war, she continued to search for the painting until she died in New York in 1994. In 1969, the German government acknowledged the validity of her claim to the painting, and gave her 100,000 Deutschemarks (worth then around $27,000 USD) in compensation. This compensation did not affect her ownership rights. Bennigson did not know about the search for the painting, and was informed of it by the ALR.

When negotiations over the work broke off, Mr. Bennigson filed suit. His attorney was E. Randol Schoenberg (who was also representing another California resident, Maria Altmann, in a highly publicized WWII-related suit against the government of Austria, to recover six paintings by Gustav Klimt).

Bennigson's complaint in Los Angeles Superior Court (December 2002) asked the court for a temporary restraining order to keep the Picasso (which had by then been sent back to Los Angeles from Geneva) in California. But it was too late. Alsdorf had already shipped the work back to her home in Chicago, where it has been ever since.

A JURISDICTIONAL SQUABBLE

Avenue battle followed – Bennigson asking that the case be tried in California; Alsdorf insisting on Illinois. The two lower courts in California (the Trial Court and Court of Appeals) ruled against Bennigson, saying that California lacked personal jurisdiction over Alsdorf. A ruling by the California Supreme Court on the jurisdictional issue was actually pending at the time of settlement.

Meantime, Alsdorf herself sued – in District Court in Northern Illinois – to have herself declared the owner of the painting, and to remove the doubt that Bennigson had placed on her legal title, which she said had been passed to her under French law. She based her argument on the fact that the work had been sold to Hahn in France, that he had acquired it in good faith, and that under the laws of France (which operates under Civil Code), legal title had been passed to him, and, in turn, to the Alsdorfs when they purchased the work from him. Bennigson, of course, disagreed. Later on, in a statement to the *Chicago Tribune* after the settlement, his attorney, Schoenberg, said: "I think it's very clear that she didn't get good title, and that's why we had a lawsuit."

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[3] *Répertoire des biens spoliés en France durant la guerre 1939-1945*, Vol.2, #7853.

[4] *Répertoire* lists Justin Thannhauser as the painting's owner. The ALR tracked his heirs to a Swiss Foundation, the Silva Casa Foundation. It was sometime later, however, that it became clear that the owner had been Carlota Landsberg and not Thannhauser.

[5] The parties dispute when and under what circumstances Mrs. Aldorf learned that the claimant was Mr. Bennigson and not the Swiss Foundation. The California Trial Court and appeals court accepted Mrs. Alsdorf's assertion that she did not learn of it until December 2002.

In October 2004, the federal government stepped in. The U.S. Attorney's office in Los Angeles filed a civil forfeiture complaint in District Court in Los Angeles (Central District) contending that Alsdorf – although by all accounts a "good faith" purchaser – knowingly transported "stolen" property in interstate commerce. That is to say, that by having the painting sent from California back to her home in Illinois, Alsdorf violated the National Stolen Property Act. The unusual basis for the action was the ALR's finding that the painting was stolen and that Mrs. Alsdorf had been notified of that. The FBI served Alsdorf with a seizure warrant and a restraining order, but permitted the painting to stay in her Chicago home, under the court's protection.

As it happens, none of these legal issues was ultimately addressed in a court of law – not Alsdorf's contention that legal title had been passed in France; not the government's contention that Alsdorf knowingly transported stolen property; not Bennigson's ownership claim. The out-of-court settlement ended all that.

THE SETTLEMENT

A joint press release was sent out on August 8 by all three parties – Bennigson, Alsdorf, and the U.S. government – giving the following as the reason for ending the dispute:

> While maintaining that the painting had been purchased in good faith with proper legal title, Marilynn Alsdorf agreed to the settlement, citing her advanced age [she is 80] and the need to resolve financial claims so her commitments to family and charitable organizations may be completed.

The parties came to a monetary agreement on June 13, but it wasn't until August 8 that, as Alsdorf's attorney, David M. Rownd, told IFAR, agreement was finalized "as to a mechanism to clear title to the painting in an appropriate manner. The dispute," he added, "was over legal title. Bennigson challenged the title. We were seeking to remove that cloud . . ." At the end of the six-week public notice period, a Consent Judgment will be entered by the U.S. District Court of the Central District of California saying, in the words of the Agreement, that Mrs. Alsdorf has "exclusive right, title and interest in the painting." That will end what Rownd described as "a very difficult situation for Mrs. Alsdorf and anyone who has a passion for collecting art and who acquired an art object in good faith, but is confronted years later with a claim that no one could have anticipated."

THE IFAR LINK

As it happens, IFAR has close relations with two parties in this legal battle. As noted above, James Alsdorf was a member of IFAR's Board of Directors in the 1980s. His widow, Marilynn, a life-trustee of the Art Institute of Chicago, whose board was formerly chaired by her husband, has supported IFAR since his death with an annual donation from the Alsdorf Foundation.

The other party to which IFAR has close relations in this dispute is the Art Loss Register, which IFAR helped create, and in which IFAR still has an ownership interest. It was the ALR's Historic Claims Director, Sarah Jackson, who "matched" the Alsdorf painting with the one registered in the Répertoire, and which gave testimony on Bennigson's behalf.

In some respects this case was not an uncommon dispute between a good faith purchaser and the family of the original owner, centered on a Nazi-looted work. What set it apart is that: 1) the work in question is a major Picasso; 2) IFAR has a relationship with two of the parties involved; 3) the good faith purchaser is a philanthropist and respected figure in Chicago art circles; and 4) novel legal issues were raised, such as how a U.S. court would treat French law and the unusual invocation of the National Stolen Property Act.

If there is anything the long and complicated battle tells us it is how ill-suited our adversarial legal system often is to resolving WWII-related art ownership disputes.

— S.F.

BRITAIN EXPLORES WAYS TO PERMIT RETURN OF NAZI-LOOTED WORKS IN MUSEUMS

Claimant Family "Hopeful" about the Outcome

The British Museum has said that it wants to return four Old Master drawings that were looted by the Nazis during WWII. The drawings entered the museum's collection not long after the war. But the Museum has been prevented from restituting the works because of provisions in the British Museum Act of 1963.

That Act severely restricts deaccessioning. It now appears likely, however, that the Act will be amended to allow an exception for works looted between 1933-1945. But that won't take place for about two years – spring 2007 at the earliest.

Once the law is amended, the four drawings can be returned to the heirs of Dr. Arthur Feldmann, a Czech collector whose Old Master drawings collection – once numbering more than 700 works – was seized by the Nazis when they invaded Czechoslovakia in 1939. Dr. Feldmann did not survive the war. His grandchildren now live in Israel.

Feldmann's grandson, Uri Peled, told IFAR that he was "saddened very much at first" to hear that the works could not be returned yet, but that he is "hopeful," because, in his own words:

> "I fully trust the sense of justice of the British people, and hope the British Parliament, being a representative of the people, will amend the law to finally make complete justice to my grandfather to enable his soul to somewhat better rest."

In 2004, as it happens, IFAR served as intermediary between an American collector and the Feldmann heirs and their representatives in restituting another Old Master drawing that had been looted from the collection (see *IFAR Journal*, Vol. 7, no. 2). That drawing, *St. Peter Liberated from Prison*, once attributed to Rembrandt, was sold at the same 1946 Sotheby's auction in London where three of the four drawings now in the British Museum were sold (to Colnaghi, who sold them to the Museum). The fourth drawing entered the Museum by bequest in 1949.

THE CLAIM

It was in May 2002 that an ownership claim for the four drawings – by Niccolo dell'Abbate, Martin Johann Schmidt, Nicholas Blakey, and a Follower of Martin Schongauer – was made to the British Museum. After reviewing the request, the Museum Trustees were "persuaded" that the drawings had belonged to Feldmann, "were wrongfully taken from him by the Gestapo... and the request for their return ought, morally, to be acceded to." Nevertheless, the Trustees felt they were restrained from returning them by the terms of the Museum Act of 1963.[1]

The Act prevents the Museum from selling or giving away works in its

"Feldmann's grandson, Uri Peled, told IFAR that . . . he is 'hopeful,' because . . . he 'fully trusts the sense of justice of the British people . . .' "

collection except under very limited circumstances. The Trustees, therefore, asked the Attorney General for permission to return the drawings to the Feldmann family. He, in turn, asked for a high court ruling.

The subject is a sensitive one since claims of Nazi-era looting are not the only claims facing the Museum. Several countries, including Greece (the "Elgin" Marbles) and Egypt (the Rosetta Stone), have asked

[1] Quoted from the British Museum Website: http://www.thebritishmuseum.ac.uk/pd/pdreww2.html.

"The subject is a sensitive one since claims of Nazi-era looting are not the only claims facing the Museum."

for the return of objects now in the Museum. Perhaps in that light the judge ruled that under existing law an exception *could not* be made for Holocaust-looted works.

Therefore, the new Minister for Culture, David Lammy, made public his desire to amend the law, but only in the case of Nazi-era looted objects. In a letter to the newspaper *Jewish Chronicle* (unpublished), he wrote:

> Broadly I believe that all our national museums and galleries which are subject to legal restrictions. . . should have a power to transfer items out of their collections where the item in question has been looted during the Nazi era.[2]

But the amendment process will be lengthy. A spokeswoman from the Department of Culture, Media and Sport told IFAR that the first step is merely to begin conversations – this fall – to determine which of three courses to follow if the law is amended:

- to allow the museums themselves to decide which work can be returned
- to give that power to the Spoliation Advisory Panel (established in 2000 to review and rule on Holocaust related claims)
- to give the power to the Culture Minister or the Secretary of State for Culture, Media and Sport.

Once a course is chosen, legislation will be drafted and a proposal submitted to Parliament as an amendment to the 1963 Act (e.g., as a sub-clause for Nazi-era looted art). But the Parliamentary Diary is a busy one, and the legislation must be mentioned in the Queen's annual speech in April. Realistically speaking, that means the new law will not take effect until at least spring 2007.

In addition to this change in the British Museum Act of 1963, a request will be made to amend the British Library Act of 1972 and the Museums and Galleries Act of 1992.

That would affect, for example, a recent action in which the Spoliation Advisory Panel recommended the return to Italy of a 12th-century manuscript that was looted during World War II and entered the collection of the British Library. Existing legislation forbids the Library from returning it.

— S.F

[2] IFAR is grateful to the Department for Culture, Media and Sport for providing this unpublished article by David Lammy, Minister of Culture, July 2005, to the *Jewish Chronicle*.

ITALIAN TRIAL OF GETTY CURATOR POSTPONED

The trial in Rome of Marion True, Curator of Antiquities at California's J. Paul Getty Museum, has been pushed back four months. Thus the art world will have to wait until November 2005 to see the outcome of a case that is sure to have an effect on the already heated atmosphere surrounding the collecting of antiquities.

The culmination of a 10-year investigation, the trial was supposed to have begun on July 18, but after a brief hearing in criminal court, the three-judge panel ordered that notification documents be translated into English, and suspended the proceedings until November 16. Neither Ms. True, nor her co-defendant Robert Hecht, an American antiquities dealer living in Paris, attended the hearing.

Ms. True has been charged with 1) trading in stolen objects, and 2) conspiracy to trade in stolen objects with dealers named and unnamed. In Italy, the documents specifying the charges (as well as other pre-trial material) are not made public. However, some details have reportedly been "leaked" by the prosecution and have appeared in the media. One of Ms. True's Italian attorneys, Francesco Isolabella, told IFAR that he did not want to commit a similar breach on behalf of the defense, but he insisted that "there is no proof of any such conspiracy" and that "everything Ms. True did was done under the light of the sun and in good faith. We must wait for the trial and the proof that will come out."

Ms. True herself has not commented publicly about the case. The museum has said that it has provided Italian authorities with requested information and that it believes True will be exonerated.

Given her credentials and background, Ms. True would appear to be an unlikely defendant. She earned a Ph.D. at Harvard, was elected to Phi Beta Kappa, and has been Curator of Antiquities at the Getty since 1986. She is also Director of the Getty Villa, which is scheduled to reopen at the Getty's Malibu property early next year. In targeting a prominent – and respected – curator like Ms. True, Italian authorities are raising the ante, as it were, in the antiquities battle.

The investigation dates back to 1995 and began with a police raid on four Geneva, Switzerland free port warehouses registered to a company owned by Giacomo Medici, an Italian art dealer. In addition to objects, the raids uncovered a large number of photographs of art objects that Italian investigators said were stolen or illegally exported from Italy. They also found documents with lists of names, which investigators said were clients of Mr. Medici. The photos and documents are said to have led investigators to objects in the Getty and Ms. True. Medici elected to have an expedited trial (thereby reducing the penalties if convicted), apart from True and Hecht. In December 2004 he was found guilty and was fined and sentenced to 10 years in prison. He continues to insist that he is innocent, is filing an appeal, and is currently free. He attended the court hearings on July 18.

About 35 of the objects whose photographs were found by Italian authorities in the Medici warehouses belong to the Getty. The exact number has not been made public. In fact, according to a Getty spokesperson, the museum has not been officially informed as to which specific objects are involved. It is widely assumed, however, that two of the objects are: the over-life-size 5th century B.C. statue of *Aphrodite* acquired by the museum in 1987, and a small marble of the goddess *Tyche,* dating to the 2nd century B.C. Mr. Isolabella told IFAR that "because Medici was found guilty, they assumed that all the objects in his warehouse were stolen. . . . There is absolutely no proof that there is any such trading [by the Getty] in illegal objects."

Italy has particularly tough cultural patrimony laws and in recent

years, has actively pursued objects that it believed were taken illegally from the country. A 1939 law (The Law of 1 June 1939 XVI, No. 1089), and a new 2004 law (Legislative Decree no. 42 of 22 January 2004), vest ownership of all newly found archaeological materials with the state and severely restrict export of art and archaeological objects. The government believes that looting is spurred by the market demand for the objects. In a statement to the *Los Angeles Times* (May 19, 2005),[1] Captain Massimiliano Quagliarella, of the Carabinieri unit dealing with archaeological theft, said: "We want this case to be a big deterrent. It is important to stop the phenomenon of illegal excavations and illegal exportation by eliminating the demand and thus eliminating the offer."

Currently, the United States and Italy have a bilateral agreement under the U.S. Cultural Property Implementation Act (CPIA) that restricts the importation to the U.S. of a broad category of Italian objects, mainly archaeological artifacts, said to be in jeopardy of pillage. The five-year agreement will expire in 2006, and Italy has recently submitted a request for renewal.

[1] Tracy Wilkinson and Suzanne Muchnic, "Italy Indicts Getty Museum Curator," *Los Angeles Times*, May 19, 2005.

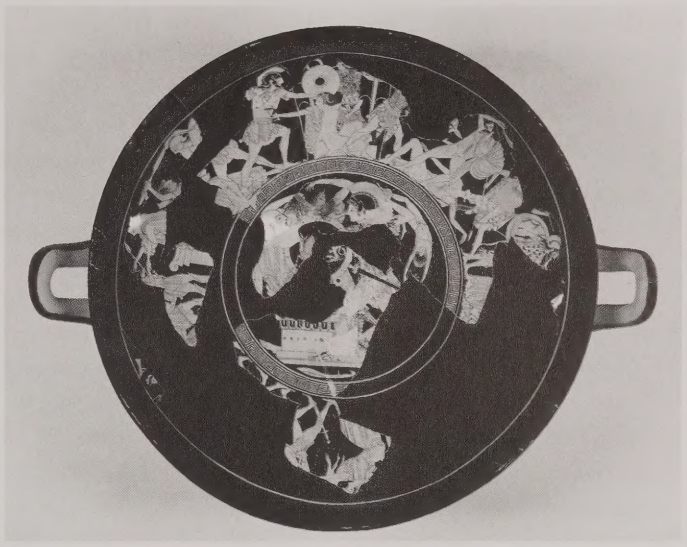


FIGURE 1. *Attic Red-Figure Kylix Type C*, c.490 B.C., Greece. Terracotta. One of the three works returned by the Getty to Italy in 1999.

Ironically, the Getty under Ms. True has adopted a strong antiquities acquisition policy, initially written in 1987 and revised and strengthened in 1995.[2] Amongst other things, the policy dictates that new acquisitions "come from established, well-documented (i.e., published) collections." In 1999, in line with that policy, the Getty voluntarily returned to Italy three objects (Fig. 1) from its antiquities collection. At the time, True noted that the policy calls for "prompt return of objects to their country of origin should information come to light that convinces us that this is the appropriate action to take." One of the three works originated from the Fleischman antiquities collection, acquired by the Getty (part purchase, part gift) in 1996.

In 1988, True refused to purchase Byzantine mosaics (which, in any case, the Getty does not collect) that were stolen from a Church in Cyprus when they were offered to her by a dealer. She notified Cypriot authorities, thereby launching a landmark cultural property lawsuit.[3] And, in 1999, when many in the collecting community were raising strong objections to Italy's request for U.S. import protections under the CPIA, it was True who spoke in favor of the request, which was ultimately approved in 2001.

— S.F.

[2] Getty Museum Acquisitions Policy for Classical Antiquities, Adopted by the Board of Trustees, November 13, 1987; Revised November 10, 1995. Printed in *IFAR Journal*, Volume 2, No. 2, Spring 1999, p. 6.

[3] *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. supp. 1374 (S.D.Ind. 1989), aff'd, 917 F. 2d 278 (7th Cir. 1990).

ANATOMY OF AN ART FRAUD:

ELY SAKHAI'S TWO-DECADE-LONG SCHEME ENDS WITH THREE AND A HALF YEARS IN PRISON

Hundreds of Works May Have Been Involved
Multi-million Dollar Civil Suit Also Filed by Fraud Victims

SHARON FLESCHER*

The saga of New York art dealer Ely Sakhai, architect of a brazen international art fraud scheme that spanned two decades and duped clients on three continents, came to an end in federal court in July 2005 when he was sentenced to 41 months in prison and fined $12.5 million.[1] He will report to prison in September. The money will build a restitution fund for defrauded clients.

As part of the court settlement, Sakhai also agreed to forfeit ownership of 11 paintings[2]– all believed to be authentic – seized by the FBI during the investigation. They had been used to make copies that were later sold as originals. After public notice to see whether anyone claims title to the paintings, the Attorney General will decide how to dispose of them; the proceeds will go to the government.

"Court documents, together with conversations with the FBI . . . and other research, have revealed much new information about this astonishing case . . . ."

Sakhai pleaded guilty in December 2004 to federal mail and wire fraud charges, in violation of Title 18, USC, Sections 371 and 1341.[3] His gallery manager and co-defendant, Houshi Sandjaby, also pleaded guilty, and was sentenced to a term of three-year's probation. Sandjaby admitted to knowing, at least since 2003, that he was participating in illegal activities. On several occasions he had been asked to deliver fake works to buyers in Japan.

The pleas avoided a jury trial where testimony and evidence concerning Sakhai's twenty-year art scam would have been presented. But court documents, together with conversations with the FBI, which carried out a six-year investigation, and other IFAR research, have revealed much new information about this astonishing case, which we can now share with our readers.

* Sharon Flescher, Ph.D., is Executive Director of IFAR and Editor-in-Chief, *IFAR Journal.*

[1] *United States v. Ely Sakhai and Houshi Sandjaby,* No. 04 CR 583 (S.D.N.Y.).

[2] As cited in the Forfeiture Order filed July 6, 2005, the works are: Marc Chagall: *L'Inspiration de l'artiste, Descente de la croix, Bouquet de Lillium, Rabbi and Torah*; Moise Kisling: *Nu;* Marie Laurencin: *Portrait de Ruban Rose*; Maurice Vlaminck: *Vase de Fleurs* and *Paysage au Toit Rouge*; Bernard Buffet: *Le Coq Rouge*; Georges Rouault: *Beau Conferencier L'Union Sacrée*; and Pierre-Auguste Renoir: *Etude de Jeune Femme.*

[3] *U. S. v. Sakhai* (December 13, 2004).

FIGURE 1. The Art Collection gallery on Broadway, in Manhattan, July 2004. Photo: S. Flescher

As described previously in *IFAR Journal* (Vol. 7, no. 1) and in court documents, Sakhai is the owner of The Art Collection, Inc., an art gallery/ bric-a-brac business whose Manhattan branch, on Broadway near Union Square (Fig. 1), has now closed, but whose second location, in Great Neck, Long Island, is still operating and is expected to remain open during his prison term. Sakhai also did business under the name "Exclusive Art, Ltd." Sakhai's scheme involved the purchasing of authentic works of art – primarily Impressionist, Post-Impressionist and early 20th century masters such as Gauguin, Chagall, and Renoir – and arranging for artists to make forgeries of them. The artists were instructed to replicate the originals exactly, to the point of copying labels and other identifying markings

"That fake, however, was not the only fake of the Gauguin *Lilas*. In 1998, *another*, virtually identical copy was consigned . . ."

front and back, and on the frames, although, as described below, the replication of labels was not always exact. In several cases, including a Gauguin and a Chagall, the forgers produced more than one copy of the original. Various devices were used to give the works an appearance of age – such as coating the paint surfaces, adding tea stains, and using older canvases. Elaborate frames were constructed and then altered, also in an attempt to make the works appear older.

The victims were mainly unsuspecting clients in Japan, Taiwan, and Korea, who were led to believe the works were authentic. Several works were accompanied by fake certificates of authenticity; some, however, had valid certificates that had been issued for the original, authentic work. The certificates were particularly important to the Japanese buyers. What set Sakhai's scheme apart – and added considerable risk – was greed. At some point, often a few years later, after he had sold the fakes, he added to his profits by putting the originals up for sale as well.

THREE GAUGUINS

Thus, in May 2000 the inevitable happened: the real work he was selling – a Gauguin *Vase de Fleurs (Lilas)* that he had purchased at Sotheby's in November 1995 – and a fake of the same work were consigned for auction at the same time. (Fig. 2) (He had sold the fake to a collector in Tokyo, who sold it to a Tokyo dealer, who, in turn, consigned it to Christie's, New York in 1997, where it was purchased for $437,000 by an unsuspecting California buyer.) The authentic work – an early, 1885 Gauguin with an impressive provenance that included Sir Laurence Olivier – was slated for the May 11, 2000 Impressionist sale at Sotheby's, and the fake was put up for the Impressionist sale the same month at Christie's, both in New York.

When the competing auction houses learned that they were selling the same (apparently identical) work, they compared the paintings side by side at Christie's. The works were also examined by a Gauguin specialist working on the catalogue raisonné then in preparation. The Sotheby's painting was declared the authentic one and was put into the sale. (It sold for $346,750.) The Christie's painting was pulled before the catalogue was printed and returned to the California consignor. (The FBI has it now.)

FIGURE 2. Three versions of Paul Gauguin's *Vase de Fleurs (Lilas)*. Oil on canvas, 1885.
LEFT: AUTHENTIC Painting. Purchased by Ely Sakhai, Sotheby's Nov. 1995; sold, Sotheby's, May 2000.
CENTER: FAKE. Sold Christie's, Nov. 1997; withdrawn from Christie's sale, May 2000.
RIGHT: FAKE. Withdrawn from Sotheby's sale Nov. 17, 1998.

When the new Gauguin catalogue raisonné, produced by the Wildenstein Foundation, was published in 2003, the entry for the *Vase de Fleurs (Lilas)* (Vol. I, #168) cautioned that a virtually exact counterfeit exists and that it had been sold at Christie's in 1997.

That fake, however, was not the only fake of the Gauguin *Lilas*. In 1998, *another*, virtually identical copy (Fig. 2, Right) was consigned to Sotheby's by a Japanese collector (lot #233, November 17, 1998). The work was withdrawn by Sotheby's before the auction and returned to the consignor. It did not figure in the government's indictment, but there is little doubt its source is the same.

CHAGALL

Sakhai was also responsible for two fakes of Marc Chagall's *La Nappe Mauve* (Fig. 3). Both were sold with certificates of authenticity. One went to a buyer in Tokyo in 1993 for $514,000, and another, in 1998, to a Taiwanese buyer. That was the same year that Sakhai sold his own – authentic – *Nappe Mauve* at Christie's, London for £340,000. He had purchased it in 1990. The two fakes are virtual duplicates of each other (and of the original) – and the backs of the two fakes are also virtually identical (Fig. 4).

Chagall is the artist who figures most prominently in Sakhai's scheme. Five of the twelve works mentioned in the FBI's indictment are Chagalls. In 2002, French authorities destroyed a fake sold by Sakhai of Chagall's *Le Roi David dans le Paysage Vert* after a court order was initiated by the Comité Chagall. But at the very moment that the fake was in the hands of the French authorities, Sakhai sent the real *Le Roi David* to an art gallery in Paris in compensation for nine works he had previously sent there, which were all determined to be fake. Ironically, the nine works were compensation for having previously sold the dealer still another forged work, by Monet.

"The forgers did not share in the profits; no criminal charges were brought against them; and it is not clear how much they knew about Sakhai's activities."

FIGURE 3. Two FAKES of Marc Chagall's *La Nappe Mauve.* Oil on canvas. **LEFT:** Sold by Sakhai to a buyer in Taiwan; **RIGHT:** Sold by Sakhai to a buyer in Japan. Both were sold with fake certificates of authenticity.

FIGURE 4. Backs of two FAKES of *La Nappe Mauve* showing virtually identical markings.

AT LEAST TWELVE FORGERS

Although only two forgers – both unnamed –were specifically noted in the indictment, later court papers say that at least 12 forgers are believed to have been involved. James P. Wynne, the FBI Agent in New York who has worked on the case since 1998, told IFAR that the forgers were hired "in serial fashion," one after the other, although, at times, more than one forger was working.[4] Many were "students in New York schools, but some had achieved recognition," having had their works "publicly exhibited or published in books." Initially, Wynne said, they were all Asian; later, Sakhai "switched to Russians." Some no longer live in the United States. The forgers did not share in the profits; no criminal charges were brought against them; and it is not clear how much they knew about Sakhai's activities.[5]

HUNDREDS OF FAKES

The indictment names 12 works, including 5 by Chagall, that figure in Sakhai's fraud scheme. An additional 16 works were placed on the FBI's Website: http://www.fbi.gov/page2/march04/scam031004.htm during the investigation. More recent court papers, however, state that there are believed to be hundreds of works involved. According to David Kelley, the U.S. Attorney for the Southern District of New York, "the investigation continues."[6]

TWENTY-YEAR SCHEME — THE FBI GETS INVOLVED

By Sakhai's own admission, the fraud lasted about 20 years. In his guilty plea before District Court Judge Loretta Preska (December 13, 2004),[7] Sakhai admitted to carrying out the fraudulent activities "from approximately 1985 to October 2003." It is not yet clear, however, when the current fraud actually began.

But the FBI's involvement began in March 1998, when Agent Wynne was alerted by an art dealer acquaintance to a problem concerning works by Bernard Buffet. Specifically, a purported Buffet *Dahlias (Zinnias in a Vase)* (Fig. 5) had been seized by authorities in France as a fake, and the certificate of authenticity accompanying it was also fraudulent. The French expert called in to examine the work and compare

[4]Conversations with IFAR's executive director July 2005 and *passim.*

[5]According to Mr. Kazuaki Nanao, a Japanese reporter who has been investigating Sakhai's activities in preparation for a book, a former Sakhai employee told him that the forgers worked in a back room of The Art Collection, and that, one time around 1990, the employee saw two Asian artists sitting side-by-side copying the same Chagall painting and a third copyist working on a landscape. This information, however, is not entered into court records.

[6]Press Release, U.S. Attorney's Office, S.D.N.Y., July 6, 2005.

[7]*U.S. v. Sakhai*, December 13, 2004.

FIGURE 5. LEFT: AUTHENTIC. Bernard Buffet, *Dahlias (Zinnias in a Vase).* Oil on canvas, 1971.
RIGHT: FAKE. The painting that launched the FBI's six-year investigation.

it with a photograph of the original remarked that the "perfection" of the copy was so striking "its realization ha[d] something machiavelic" [sic] about it.[8] In fact, he wrote, it was a "diabolical" copy. Its certificate, too, was a "clever forgery." The fake was seized and traced to Exclusive Art, Ltd., Sakhai's company. The problem was that several authenticity certificates had been issued to Exclusive Art. Armed with this information, Wynne launched a six-year investigation that took him to Japan and Switzerland. He built the evidence against Sakhai, he told IFAR, "painstakingly, piece by piece. There was no one smoking gun. The case did not just unravel" all of a sudden. That concept, widely circulated in the media because of the coincidence of the two Gauguins showing up for auction in the same city at the same time, "is erroneous." In fact, Wynne added, neither Christie's nor Sotheby's attached Sakhai's name to the fake Gauguin when it was consigned for auction in May 2000.

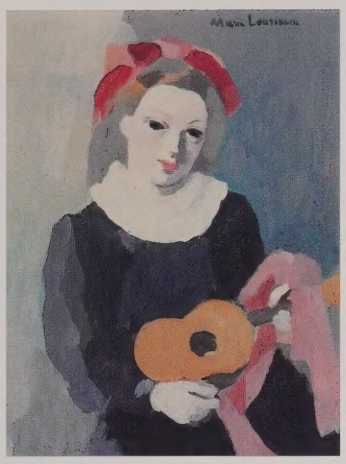
"Wynne launched a six-year investigation . . . He built the evidence against Sakhai 'painstakingly, piece by piece. There was no one smoking gun.' . . . That concept, widely circulated in the media because of the coincidence of the two Gauguins showing up for auction in the same city at the same time, 'is erroneous'."

THE TELLTALE LABEL

Replicating labels and other markings from the original works was an integral part of Sakhai's scheme. But, at times, the labels were the giveaway. One such case was Marie Laurencin's *Jeune Fille à la Mandoline* (also called "Jeune Fille à la Guitare"). The original was bought by Sakhai at Christie's in November 1990 (Fig. 6). He sold a fake of the work in 1995 with a certificate of authenticity. After transferring hands several times, the fake was consigned to Christie's, New York for its May 15, 1997 auction (lot # 399), where it sold for $79,500. But just around the time of the sale, according to the Sakhai indictment, Christie's learned that Sakhai had a similar image, and arranged for the two paintings to be examined by an expert side by side. Although the fake was so good that it was clear to the expert that a "blatant attempt" had been made to forge the original by "mimicking the exact brush strokes, and even scratching the surface of [the] painting in the same place as the scratch in the original painting"[9] (Fig. 7), the expert also noted that the painting that had been "sold by Christie's in 1990 had the Christie's stock number information written on a Christie's label." But this was not the case with the painting consigned in 1997. On it, the expert wrote, there was "a Christie's stock number, which refers to the painting sold in 1990 but which is handwritten directly on the stretcher (not on a Christie's label) in a manner which is inconsistent with our method of marking and identifying paintings." The 1997 sale was quickly rescinded.

[8] *U.S. v. Sakhai*, Sentencing Memorandum.

[9] *U.S. v. Sakhai*, Sentencing Memorandum.



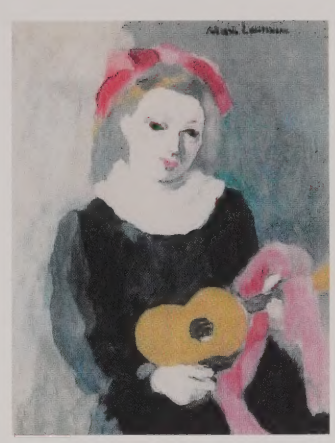
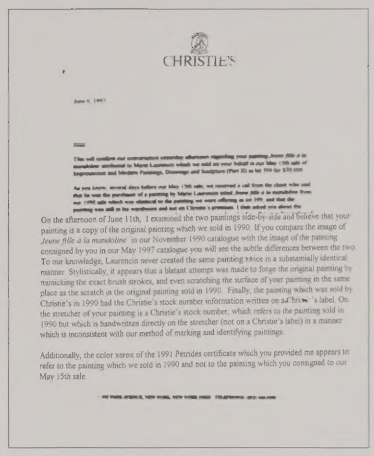


FIGURE 6. LEFT: AUTHENTIC. Marie Laurencin, *Jeune Fille à la Mandoline.* Purchased by Sakhai in 1990
RIGHT: FAKE. Marie Laurencin, *Jeune Fille à la Mandoline.* Oil on canvas. Sold by Sakhai in 1995; consigned to a Christie's May 1997 auction. The sale was rescinded.



CHRISTIE'S

On the afternoon of June 11th, I examined the two paintings side-by-side and believe that your painting is a copy of the original painting which we sold in 1990. If you compare the image of *Jeune fille a la mandoline* in our November 1990 catalogue with the image of the painting consigned by you in our May 1997 catalogue you will see the subtle differences between the two. To our knowledge, Laurencin never created the same painting twice in a substantially identical manner. Stylistically, it appears that a blatant attempt was made to forge the original painting by mimicking the exact brush strokes, and even scratching the surface of your painting in the same place as the scratch in the original painting sold in 1990. Finally, the painting which was sold by Christie's in 1990 had the Christie's stock number information written on a Christie's label. On the stretcher of your painting is a Christie's stock number, which refers to the painting sold in 1990 but which is handwritten directly on the stretcher (not on a Christie's label) in a manner which is inconsistent with our method of marking and identifying paintings.

Additionally, the color xerox of the 1991 Petridès certificate which you provided me appears to refer to the painting which we sold in 1990 and not to the painting which you consigned to our May 15th sale.

FIGURE 7. 1997 letter discussing the errors on the back of the fake Laurencin. Photo: Sakhai Sentencing Memorandum.

THE JAPANESE CONNECTION — AN EARLIER SCANDAL

The corrupt practices triggered by Sakhai stretch back at least to 1982, to another major fraud scandal, in Japan. It was Sakhai who sold 47 supposed Persian antiquities to a Japanese dealer, who, in turn, sold them to the Mitsukoshi Department Store. They were exhibited by the store, in accordance with Japanese custom, to great attention and fanfare, and then they were exposed as fakes (Fig. 8). The incident, embarrassing and highly publicized, was one factor leading to the ouster of the head of Mitsukoshi.[10] One can only wonder how, after that, Sakhai was able to carry on such extensive business dealings in that country.

It has been noted that many of Sakhai's duped clients were Japanese or from other Asian countries. This may have to do with the strong Japanese interest in Impressionist and Post-Impressionist artists, and to the distance of Japan/Asia from the major Impressionist art centers in Paris and New York, which meant that unsuspecting buyers were less likely to have access to the best specialist expertise. There is also the culture of "saving face," which reduced the likelihood that the Japanese would go public with their mistakes. This most likely contributed to the scam staying "under the radar" for as long as it did. The Japanese, in any case, are also less litigious than Americans. But still another factor might be that Sakhai's wife is Japanese (they married in 1980 when he was 28). Sakhai himself was born in Iran, but came to the U.S. in the 1960s. Through his wife, he made many contacts in Japan.

UNSUCCESSFUL SOTHEBY'S SALE

The plea agreement calls specifically for Sakhai to pay $12.5 million into a restitution fund. Sakhai asked for a delayed sentencing date to allow him time to sell paintings to raise the funds. But his attempt to sell six works by Matisse, Pissarro, Picasso, Renoir and Vlaminck at the Sotheby's May 3 and 4 Impressionist sales – with a total high estimate of $6.7 million – failed completely.[11] All the works were bought in. One might speculate that buyers were concerned that the works could become problematic if additional fakes appeared on the market.

[10]My thanks to Kazuaki Nanao for information about this scandal. See also, the *New York Times*, "Chief of Mitsukoshi is Ousted," September 23, 1982, Section D, p. 6.

[11]Items # 53, 57, 204, 231, 153, and 160. All were consigned by his company Exclusive Arts, Ltd.

FIGURE 8. FAKE Persian 4th century A.D. Vase, sold by Sakhai in 1982 and exhibited by the Mitsukoshi Dept. Store, Tokyo. Photo: *Geijutsu Shincho*, October 1982.

ADDITIONAL LEGAL TROUBLES — THE LAWSUIT

Although he will soon enter jail and is protected by double jeopardy from being tried again for the criminal activities outlined in the U.S. government's case, Sakhai's legal troubles are not over. A Japanese businessman, Yoichi Takeuchi, together with five Japanese companies controlled by him as named plaintiffs, filed a civil lawsuit against Sakhai, his attorneys, Seligson, Rothman & Rothman, and two business associates on April 7, 2005.

The suit,[12] filed under the U.S. Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961, *et seq*), commonly known as RICO, is asking for $22 million plus interest, with treble damages related to schemes in the 1990s to defraud the plaintiffs into "purchasing forged art work."

The scope and nerve of the alleged scams – incident after incident – are astonishing. A group of 72 Old Master paintings purchased by Takeuchi from Sakhai for more than one billion Japanese Yen (approximately $9 million USD) in 1990 and 1991 were all fake, according to the suit. Then there was a group of 414 works said to be from the "Tauber Collection," purchased by Takeuchi *et al* in 1992 through Sakhai and Seligson for almost $4 million. These, too, the suit charges, were all discovered to be forgeries.

Later that year, the plaintiffs put up 350 million yen in cash and furniture and antiques to purchase another 57 supposed Old Master paintings owned by Sakhai, including Rubens' *Death of Adonis* and Tintoretto's *Portrait of Divine San Rocco*. These, too, the suit states, were identified as forgeries and declared "essentially worthless".

There followed a loan scheme in which Sakhai associates Michael Altamura and Vincent Altamura are said to have represented themselves as Citibank officers with the authority to sell Rembrandt's *Apostle James*, which was owned by Sakhai and which was supposedly deposited with Citibank as collateral for a loan. Sakhai persuaded Takeuchi to purchase the Rembrandt after assuring him that the work was authentic. Not surprisingly, it, too, proved to be a fake.

Between the U.S. government's criminal case involving modern masters, and the civil allegations concerning Old Masters in the Takeuchi suit, there are now many hundreds of identifiable fakes linked to Ely Sakhai. We can only speculate as to how many others there may be out there.

• • •

[12] *Takeuchi v. Sakhai*, No. 601237/2005 (N.Y. Sup. Ct.) The defendants are: Ely Sakhai, Michael Altamura, Vincent Altamura ("Mr. Vincent"), Aaron Seligson; and Seligson, Rothman & Rothman, a Manhattan law firm.

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Should the U.S. Grant China's Request for an Art-Import Ban?

Pros and Cons

INTRODUCTION

A request by China[1] for help in restricting the importation of a broad category of Chinese art and artifacts into the U.S. is raising the already heated temperature surrounding the contentious field of antiquities collecting. China made the request under the Convention on Cultural Property Implementation Act (CPIA), signed into law in 1983 as the enabling legislation for U.S. implementation of the 1970 UNESCO Convention on the Protection of Cultural Property. Under the CPIA, countries whose cultural heritage is in "jeopardy of pillage" and which meet certain other specifications can ask the U.S. for help in stemming that pillage by preventing objects at risk from entering the country. At issue in the Chinese request is whether China meets those specifications and whether the request itself – comprising a range of objects spanning 150,000 years, from the paleolithic period to the Qing Dynasty ending in 1911 – is simply too broad.

It is not known when – or how – the U.S. will respond to the request. But in the twenty plus years since enactment of the CPIA, no request for protection by a foreign country has been rejected.

[1] "Request of the People's Republic of China to the Government of the United States of America under Article 9 of the 1970 UNESCO Convention," available at the State Department Website: http://exchanges.stage.gov/culprop/cno4sum.html.

PUBLIC HEARING

China submitted its request in May 2004, but the debate didn't become public until the winter, when opposing forces staked their positions and began a pitched public relations battle. Articles pro and con appeared in the *Wall Street Journal* (March 2 and 29, 2005) and *Art Newspaper* (April), in magazines such as *Orientations* (March and April), and on Websites. But the audience that counts most is the eleven-member Cultural Property Advisory Committee (CPAC), an advisory body of the U.S. State Department that reviews foreign requests under CPIA and advises the U.S. President on a course of action. Most of CPAC's hearings are private. But, exceptionally, in addition to three closed sessions (most recently on March 31-April 1), CPAC held a public hearing on the Chinese request in Washington on February 17.

"In the twenty plus years since enactment of the CPIA, no request for protection by a foreign country has been rejected."

Twenty-two speakers, allotted five minutes each, addressed the Committee: fifteen against; seven in favor. Among the fifteen were the directors of four major museums – the Art Institute of Chicago, the Asian Art Museum, the Cleveland Museum, and the Nelson-Atkins Museum. Joining them in opposition were two attorneys who represent collectors and dealers; two experts from Sotheby's; a private collector; Arthur Houghton, a member of the Council for Cultural Policy, a pro-collecting advocacy and educational group, and also a former member of CPAC; two coin collectors; and several dealers, including James Lally, President of J.J. Lally & Co., who spearheaded a campaign against the proposed restrictions, telling IFAR that the "State Department is blithely giving away cultural property restrictions to any country that asks." The office, he added, is run by "messianic archaeologists who believe that every object is for historical interest. No one else has the right to a different view." The Chinese government did not send a representative to the public hearings, but did send a delegation to the private hearing held on April 1.

Speaking in favor of the request were attorney Patty Gerstenblith, representing the Lawyers' Committee for Cultural Heritage Protection, who, like Houghton, is a former member of CPAC, and Robert Bagley, an archaeologist from Princeton University. Also speaking in favor were two curators from The Field Museum in Chicago, and three representatives of Saving Antiquities for Everyone (SAFE), a new advocacy organization that coordinated an on-line petition in support of China's request, which generated several hundred responses.

Rather than summarize the arguments, IFAR has selected eight of the talks for publication, five opposed and three in favor – a similar proportion as at the hearing. We have included all four of the museum directors because of the prominence of the institutions and their varied perspectives.

THE COMMITTEE

By law, the CPAC's eleven members are intended to reflect the communities most affected by the CPIA's import restrictions: Two represent the interests of museums; three the interests of the general public; three are experts in the fields of archaeology, anthropology, and ethnography; and three are experts in the international sale of cultural property, i.e., dealers and collectors. In recent years, however, the art market has complained that its interests have not been adequately represented and that vacancies on its three seats, as an example, were not being filled. CPAC members are appointed by the U.S. President for three-year renewable terms. Traditionally the terms were staggered, but an entirely new committee chaired by Jay Kisluk, a Florida businessman and collector, was appointed in 2004, and all positions are currently filled.

THE CPIA

The U.S. was one of the first major art importing countries to ratify the UNESCO Convention, which has now been ratified by 107 countries. It took eleven years, however, from the U.S. Senate's consent to ratify (with conditions) in 1972 to passage of the implementing legislation, the CPIA, and even that only came about after considerable Congressional debate and compromise. Restraints were put in place under the CPIA whereby requests by foreign countries, who must be signatories to the Convention, would be granted only after careful review as to the need for U.S. import protection, its efficacy and its duration. Protection, in the form of bilateral agreements (currently there are 10), would be limited to five years and renewed only if the protection were still needed.

THE FOUR DETERMINATIONS

As specified in the CPIA, there are four criteria that the Cultural Property Advisory Committee must consider in weighing requests:

(A)"that the cultural patrimony" of the country asking for U.S. protection "is in jeopardy from the pillage of archaeological or ethnological materials . . ."

(B) that the country itself "has taken measures con-

sistent with the Convention to protect its cultural patrimony;"

(C) that: (i) the requested import restrictions if applied together with restrictions by other countries with a "significant import trade in such material, would be of substantial benefit in deterring" the pillage, and that (ii) "remedies less drastic than import restrictions are not available";

(D) "that the application of the import restrictions . . . is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes."

CHINA'S RECORD

China's past record in protecting its cultural heritage is very checkered, but in more recent years it has begun putting strong cultural heritage protection measures in place. A new cultural heritage law was implemented in 2002,[2] revising a 1982 law already revised in 1991. In addition, the country has resorted to draconian methods, even death, to punish looters. In February 2000, for example, Chinese authorities executed three men found guilty of stealing murals from a museum in Eastern China,[3] and in 2004, a relics' official in the northern province of Hebei was sentenced to death for stealing national treasures that were under his care. Whether these measures are merely "for show," as Marc Wilson, Director of the Nelson-Atkins Museum, believes, or meet the criteria required under the CPIA, are issues discussed in the presentations below. Also discussed is the degree to which the strong market for antiquities *within* China and the legal market in Hong Kong undermines the request for U.S. import restrictions.

THE REQUEST

China's formal request outlines the "serious damage" caused by the "huge demand for Chinese cultural artifacts," and cites the more than "6,000 ancient sites" in Chifeng City of Inner Mongolia alone that were looted in the past 20 years, as well as a container of 4,000 archaeological artifacts intercepted by Chinese authorities in 1997. It enumerates internal measures enacted to stem the looting and illegal export, from passage of the legislation cited above, to the creation of an elaborate bureaucracy responsible for the "protection of cultural relics," the "approval of archaeological projects," and the establishment of "rules and regulations."

Its request devotes only two brief paragraphs, however, to examples of looting involving the United States, including a shipment of illegally exported artifacts discovered in 1997 by Seattle Customs in containers sent from Hong Kong – and later returned to Hong Kong – as well as other illegal shipments that turned up in New Jersey and San Diego in 1998 and 1999. The request does not cite one of the most publicized U.S. incidents: the marble wall panel that turned up at a Christie's New York auction on March 21, 2000 with an estimated sale price of $400,000-$500,000. The carved wall relief of a warrior (Fig.1 and Journal cover) was one of several panels that had been looted in 1994 from the 10th century tomb of Wang Chuzhi in Northern China.[4] In response to a request from Chinese authorities, the U.S. Attorney's office, Southern District of New York, brought a civil forfeiture proceeding to seize the panel, and, with Christie's cooperation, the panel was returned to Chinese officials. Another panel from the same tomb, also in the U.S. but in the possession of an antiquities dealer, was voluntarily sent to China by the dealer without a claim for it even being made,

[2] People's Republic of China, Law on the Protection of Cultural Relics, October 28, 2002.

[3] See Spencer, P. M. Harrington, "Chinese Thieves Executed, but Loot Remains at Large,"www.archaeology.org/online/news/china2.html.

[4] Christie's New York auction: "Fine Chinese Ceramics, Paintings and Works of Art," Tuesday, 21 March 2000, item #209. For information about the return, see Press Release, U.S. Customs Service, May 23, 2001 "U.S. Customs Service Returns Rare 10th Century Burial Sculpture to China."

FIGURE 1. Marble wall panel from the Five Dynasties (906–960 A.D.) tomb of Wang Chuzhi looted in 1994 and returned to China in 2001 after it turned up at auction in New York. Ht.: 44 1/2" (113 cm). © Christie's Images Incorporated 2004/05.

FIGURE 2. Standing Bodhisattva, Limestone, Shandong Province, China, first half of the 6th century A.D. Ht.: 47 1/2" (120.5 cm). Purchased by the Mijo Museum, Japan, in 1996 and claimed by China. It will be returned to China in 2007.

when its similarity to the panel under investigation made him aware of its looted provenance.

The Chinese request for U.S. help in 2000 was part of a stepped up campaign to recover looted items, through repurchase or legal claim. More recently, China made a claim to the Mijo Museum in Japan for a "Standing Bodhisattva" (Fig. 2) that had entered the museum's collection in good faith in 1996, but was shown to have been looted from a storehouse in Shandong Province in China. An amicable settlement calls for the statue to remain on view at the museum until 2007 and then be returned to China.

In a talk for IFAR in New York in 1995, J. David Murphy, one of the foremost specialists on Chinese cultural property law and, at the time, a Professor of Law at the University of Hong Kong, outlined the legal measures that China was already using to protect its cultural property and the extensive "grave-robbing" taking place "on a massive scale." He cited Chinese State Bureau of Cultural Relics' statistics indicating "40,000 reported cases of tomb-robbing" in 1989-90 and more than "100 pieces of legislation relating in some way to cultural property" already on the books. He predicted increasing stepped up measures by the Chinese government, but thought it unlikely that China would "resort to visible, formal, intergovernmental requests for assistance in the repatriation of cultural property." Although he believed it could change, he had "difficulty accepting that the People's Republic of China would come, cap in hand as it were, to make a formal request to the USA under Article 9 of the 1970 UNESCO Convention." Ten years have passed, and China has indeed changed course. The discussions below outline some of the impassioned responses generated by that change.

SHARON FLESCHER

[5] *IFAR Evening*, April 4, 1995: J. David Murphy on "Cultural Property in China: The Market, The Law, and The Reality."

SELECTED STATEMENTS*

PRO

AN ARCHAEOLOGIST'S VIEW

ROBERT W. BAGLEY
Professor, Dept. of Art and Archaeology
Princeton University

A LEGAL VIEW

PATTY GERSTENBLITH
Professor, DePaul University College of Law
President, Lawyers' Committee for
Cultural Heritage Preservation

AN ADVOCATE'S VIEW

CINDY HO
Founder, Saving Antiquities for Everyone
(SAFE)

CON

THE MUSEUM DIRECTORS' VIEW

KATHERINE LEE REID
Director, Cleveland Museum of Art

MARC F. WILSON
Director, Nelson-Atkins Museum of Art

JAMES CUNO
Director, Art Institute of Chicago

EMILY J. SANO
Director, Asian Art Museum

A DEALER'S VIEW

JAMES J. LALLY
President, J.J. Lally & Co.

*There were 22 presentations made to the Cultural Property Advisory Committee on February 17, 2005 regarding China's request: 7 Pro; 15 Con. One other statement (Con) was submitted, but not presented. In addition, numerous petitions were submitted on both sides. This representative selection of presentations, edited for Journal style, is being published with the permission of the speakers.

STATEMENT TO THE CULTURAL PROPERTY ADVISORY COMMITTEE

ROBERT W. BAGLEY*

PRO

In support of the Chinese government's request, I should like to describe an archaeological discovery that has been the focus of my research for the last eight or ten years. It is an ancient tomb that Chinese archaeologists excavated in 1979. The tomb was a timber-built construction, an underground palace with four large chambers. It seems to have filled up with water immediately after it was sealed, and this had the fortunate effect of keeping perishable materials from decaying.

The tomb was astoundingly rich; in a few pages I cannot even list its contents, much less describe them. Let me just mention that it contained ten metric tons of bronze artifacts – 22,000 pounds of bronze. And it contained the instruments of an orchestra: about 30 wooden instruments, mainly winds and strings, all perfectly preserved, and a tuned set of 65 bronze bells (Figs. 1 and 2). The bells were found in place on a lacquered wooden rack 9 feet high; the rack survived intact underwater even though the bells it was carrying weigh 6,000 lbs.

"The tomb was astoundingly rich . . . it contained the instruments of an orchestra: about 30 wooden instruments. . . and a tuned set of 65 bronze bells. . . . This set of bells is by far the oldest chromatically-tuned instrument known anywhere."

One of the bells has an inscription that gives us a date for the whole tomb: the occupant of the tomb, the ruler of a minor state in the middle Yangzi region, died in 433 BC. The buried orchestra is 2,500 years old. In the archaeology of ancient music, it is the most important discovery ever made anywhere in the world.

Let me talk just about the bells. They have gold-inlaid inscriptions about music theory; the text is spread over the bells and continues in the wooden

* Robert W. Bagley is Professor, Department of Art and Archaeology, Princeton University.

FIGURE 1. Set of 65 bells on an l-Shaped rack, rear view of the short arm of the L. Tomb of Marquis Yi of Zeng (d. 433 BC) at Suizhou, Hubei province, China.

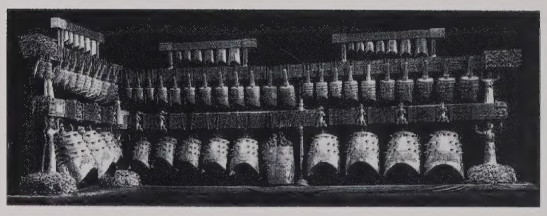

FIGURE 2. Set of 65 bells from the tomb of Marquis Yi. Height 8' 11", length of long arm 24'7".

rack (Fig. 3). These inscriptions are the earliest known Chinese writings about music theory. Moreover, each bell is labeled with its pitch, and the bells still sound their original pitches, so the musical scale of the 5th century BC is written out for us on an instrument that can still play that scale. And the scale is a surprise: it is a chromatic scale, in other words, it is exactly the same scale that we tune our pianos to today. This set of bells is by far the oldest chromatically tuned instrument known anywhere; it is older by almost 2,000 years than the earliest Western instruments tuned chromatically.

This is not only a sensational discovery, it is a bewildering one. Why does our musical scale turn up in China in the 5th century BC? When I tell Western musicologists that these bells play a chromatic scale, they do not believe me; then I show them the evidence, and they are speechless. The evidence is ironclad – or perhaps I should say, it is cast in bronze and inlaid in gold; it is clear and irrefutable. Musicologists must abandon their ideas about how the chromatic scale originated, and they must think again about how this scale relates to the mechanisms of human auditory perception.

The bells, along with the other contents of this tomb, are on permanent display in the Hubei Provincial Museum in Wuhan. The excavators filmed the excavation as it proceeded; they have published a detailed excavation report (it gives frequency measurements taken from the bells); they have issued a CD and a CD-ROM on which you can hear the bells play; and they have published several books with good photographs of the tomb and its contents. Countless other books and articles have been written about the discovery, and the Hubei Provincial Museum has held an international conference devoted to it. Replicas have been made of all the instruments, performers have learned to play them, and the replica orchestra has given concerts all over the world. Objects from the tomb have been sent abroad in many traveling exhibitions; I have seen them not only in China but also in Provo (Utah), Orlando (Florida), San Diego, and here in Washing-

> "Let us try to imagine what would have happened if looters had reached this tomb before the archaeologists did . . . ."

"Dealers and collectors and museums often defend the purchase of looted objects by saying that they preserve those objects. But they do not talk about what they destroy . . ."

ton at the National Gallery and the Sackler Gallery. Five years ago the Sackler Gallery did an exhibition devoted exclusively to the musical instruments. The catalogue of that exhibition is *Music in the Age of Confucius* (Smithsonian Institution: 2000), edited by Jenny F. So.

Now let us try to imagine what would have happened if looters had reached this tomb before the archaeologists did.

Tomb robbers are not careful excavators. They tunnel in, generally doing a lot of damage in the process; they take the objects that are most marketable and easiest to transport; and they leave the rest – sometimes they deliberately smash what they leave behind, perhaps to increase the value of what they take.

In this tomb they would not have taken the wooden objects; those are too fragile, too difficult to conserve: preserving them after they are removed from the water is very tricky. The moment looters broke the seal of the tomb and drained the water, the wooden objects would have begun drying out, and as soon as they were dry, they would have disintegrated. That would have been the fate of the lacquered wooden rack for the bells; it would have crumbled, taking its inscriptions with it. As for the bells themselves, it

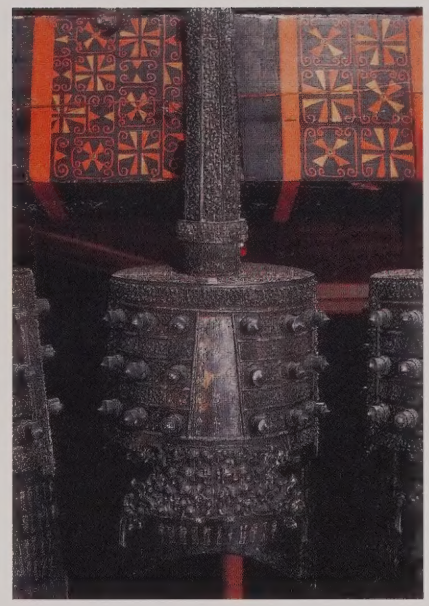

FIGURE 3. Detail of bell set showing gold-inlaid inscriptions concerning musical scales.

FIGURE 4. Performers behind the long arm of the rack playing the bells of the middle tier.

FIGURE 5. Zither with 25 strings, lacquered wood. Length 5' 6". Tomb of Marquis Yi.

"Nobody will ever know what looting has cost us, but there is no doubt that the destruction going on today at sites all over China is catastrophic, despite the fact that looters are subject to prison terms or even the death penalty . . ."

is not likely that looters would try to smuggle out of China intact a set that weighs 6,000 pounds. They would probably take a selection of the most attractive medium-sized bells and leave the rest; or perhaps the set would be broken up, and the bells that survived would be scattered all over the world. Most of them would probably disappear into private collections and then, after a generation or two, resurface in museums.

In short, once the looters had finished with their work, nothing would survive of the orchestra but the bells, and the bells would survive only as scattered individuals, not as a tuned set.

If that had happened, what would we have lost? We would not have a date for the objects that survived; only one object in the tomb has a datable inscription, and once the other objects were separated from it, they would be undatable. Worse still, there would be no record of where the bells were found or how many were found together; we would not know what the set originally consisted of; we would not even be certain that the bells we knew of were components of a single set. Not having all the inscriptions, we would be unable to make sense of the ones we had. And we would never suspect that the set plays a chromatic scale. Instead of being the greatest discovery in the history of musical archaeology, this tomb would just have supplied some pretty bells to a few collectors.

Dealers and collectors and museums often defend the purchase of looted objects by saying that they preserve those objects. But they do not talk about what they destroy; they do not even know what they destroy – looters do not keep records. Nobody will ever know what looting has cost us, but there is no doubt that the destruction going on today at sites all over China is catastrophic, despite the fact that looters are subject to prison terms or even the death penalty (they risk death because of the money that dealers and collectors, safe on the other side of the border, hold out to them). Archaeological institutes try to patrol places that are known to contain major tombs – half a dozen excavated tombs are known in the vicinity of the one I have described – but long-term policing of sites that archaeologists lack the resources to excavate is extremely costly and limited in effectiveness. Readers of archaeological reports are all too familiar with statements like this one: "We excavated one tomb in the cemetery; the other seven had been recently looted." The loss to China, the loss to all of us, is incalculable. And it happens because dealers and collectors and museums pay good money for loot.

STATEMENT TO THE CULTURAL PROPERTY ADVISORY COMMITTEE

PATTY GERSTENBLITH*

PRO

I am submitting this letter on behalf of myself and the Lawyers' Committee for Cultural Heritage Preservation[1] in support of the request of China under Article 9 of the 1970 UNESCO Convention and the Convention on Cultural Property Act (CPIA), 19 U.S.C. § 2602, for the United States to impose import restrictions on archaeological materials that are illegally exported from China. While it is clear that the archaeological heritage of China has suffered from considerable looting of sites[2] and that this creates jeopardy to the cultural patrimony of China, I will focus my comments on certain aspects of the second and third determinations that the Committee will consider under the CPIA.

The second determination concerns the question of whether China "has taken measures consistent with the Convention to protect its cultural patrimony," 19 U.S.C. § 2602(a)(1)(B). There are numerous factors that the Committee will consider in this regard, one of which is whether the legal regime in China serves to protect its archaeological heritage in a manner consistent with the 1970 UNESCO Convention.

China's earlier Cultural Relic Protection Law, enacted in 1982, vested ownership of all archaeological materials in the nation and prohibited the export of all archaeological materials.[3] This law was extensively amended in 2002 by a new law, the 2002 Law on the Protection of Cultural Relics (2002 LPCR).[4] The

"I will focus my comments on certain aspects of the second and third determinations that the Committee will consider under the CPIA."

* Patty Gerstenblith is Professor of Law at DePaul University College of Law and Director of its Arts and Cultural Heritage Program. She served as a public representative on the Cultural Property Advisory Committee from 2000-2003.

[1] The Lawyers' Committee for Cultural Heritage Preservation is an association of lawyers who have joined together to promote the preservation and protection of cultural heritage resources in the United States and internationally through education and advocacy.

[2] *See, e.g.,* He Shuzhong, *Illicit Excavation in Contemporary China*, in TRADE IN ILLICIT ANTIQUITIES: THE DESTRUCTION OF THE WORLD'S ARCHAEOLOGICAL HERITAGE pp. 19, 20-22 (Neil Brodie, Jennifer Doole & Colin Renfrew, eds. 2001).

[3] PEOPLE'S REPUBLIC OF CHINA, CULTURAL RELICS PROTECTION LAW (adopted at the 25th Meeting of the Standing Committee of the 5th National People's Congress, Nov. 19, 1982) *in* THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 1979-1982, p. 313 (1982). This earlier law and its enforcement are discussed in detail in J. DAVID MURPHY, PLUNDER AND PRESERVATION: CULTURAL PROPERTY LAW AND PRACTICE IN THE PEOPLE'S REPUBLIC OF CHINA, pp. 83-142 (1995); *see also* J. David Murphy, *An Annotated Chronological Index of People's Republic of China and Statutory and Other Materials Relating to Cultural Property*, 3 INT'L. J. CULTURAL PROP. p. 159 (1994), and Anne Carlisle Schmidt, *The Confuciusornis Sanctus: An Examination of Chinese Cultural Property Law and Policy in Action*, 23 B.C. INT'L. & COMP. L. REV. p. 185 (2000). According to Murphy, state ownership of unexcavated archaeological materials dates back to the 1961 Provisional Regulations on the Protection and Administration of the Cultural Heritage of 17.11.60, approved by the 105th plenary session of the State Council, *see* MURPHY, PLUNDER AND PRESERVATION, *supra*, at 82.

[4] PEOPLE'S REPUBLIC OF CHINA, LAW ON THE PROTECTION OF CULTURAL RELICS (adopted at the 30th Meeting of the Standing Committee of the 9th National People's Congress, Oct. 28, 2002), *available at* LEXIS PRCLEG 2506. *See also* Michael J. Dutra, *Sir, How Much Is That Ming Vase in the Window?: Protecting Cultural Relics in the People's Republic of China*, 5 ASIAN-PACIFIC LAW & POL. J. pp. 62, 82 n.88 (2004).

2002 LPCR continues the vesting of ownership of all cultural relics obtained through licensed excavation or accidentally in conjunction with agriculture and construction projects in the state.[5] The sale, as well as permanent export, of such newly excavated archaeological objects is prohibited.[6] The 2002 LPCR also establishes mechanisms for the temporary export of all types of Chinese cultural relics for exhibition purposes.[7] The law permits such exports for up to a year, which may be extended an additional year. While little information seems as yet available as to enforcement of the 2002 law,[8] examples of enforcement of the earlier law are reported in the literature.[9]

In evaluating the second determination, one therefore concludes that China has created a domestic legal regime that is consistent with the 1970 UNESCO Convention and that is intended to protect the archaeological heritage in a manner that is

"In evaluating the second determination, one therefore concludes that China has created a domestic legal regime that is consistent with the 1970 UNESCO Convention . . ."

similar to what numerous other countries with a rich archaeological heritage do. Furthermore, there is evidence that China attempts to enforce this law, both by intercepting looters illegally plundering archaeological sites and by preventing illegal export of such items. At the same time, China with its large population, long history, and rural poverty undoubtedly faces a difficult task. The changes introduced by the 2002 law, which are intended to permit a regulated trade in other types of cultural relics, may also complicate the legal treatment and protection of archaeological objects.[10]

The third determination that the Committee must address is the "concerted action" requirement, that is,

[5]LPCR 2002, *supra* note 4, Articles 5, 32 and 34; *see also* Dutra, *supra* note 4, at 83.

[6]LPCR 2002, *supra* note 4, Articles 50 and 51. *See also* Interim Provisions on the Administration of Cultural Relic Auction, 14.7.2003, *available at* LEXIS PRCLEG 3012, Article 12, which states: "The following cultural relics shall not be considered as cultural relic objects of auction: (1) the cultural relics excavated inside the territory of China which shall be turned into the State in accordance with the law ...".

[7]LPCR 2002, *supra* note 4, Articles 60-62; *see also* REGULATION FOR THE IMPLEMENTATION OF THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PROTECTION OF CULTURAL RELICS, 1.7.2003, (adopted by the 8th executive meeting of the State Council on May 13, 2003), *available at* LEXIS PRCLEG 2796, Articles 44-51; Presentation of Wang Li Mei, *Cultural Property Forum: The Export Policies of China, Korea, and Japan*, Japan Society, New York, April 9, 2003, *available at:* http://www.japansociety.org/email_images/gallery%20transcript.pdf.

[8]Administrative, civil and criminal penalties are listed in Articles 64-79 of the 2002 LPCR, *supra* note 4. Criminal sanctions are also imposed in Articles 151, 263-64, and 324-329 of the PEOPLE'S REPUBLIC OF CHINA, CRIMINAL LAW, 1.10.1997 (adopted at the 5th session of the 8th National People's Congress, Mar. 14, 1997), *available at* LEXIS PRCLEG 354; see also Dutra, *supra* note 4, at 89-93. Article 328 specifically addresses illegal excavation.

[9]Wang Li Mei reported that in 1997, over 600 incidents of attempted illegal removal of cultural artifacts were detected. In addition, numerous cases of antiquities being smuggled via container have been prevented, one of which involved over 4,000 items in a single container. In 1999, Customs intercepted 11 shipments with over 1,000 items. *Cultural Property Forum*, *supra* note 7; *see also* Dutra, *supra* note 4, at 92. He Shuzhong reported that Customs intercepted more than 110,000 cultural objects (both archaeological objects and other types of cultural objects) between 1991 and 1995, more than 12,000 in 1997, and more than 5,000 in 1998, see *supra* note 2, at 23 [note that this article was written in 1999 and so presents the most recent statistics available at the time]. David Murphy recounts the interceptions of antiquities being smuggled out of China in the 1980's and early 1990's in J. David Murphy, *Hong Kong, 1997, and the International Movement of Antiquities*, 4 INT'L. J. CULTURAL PROP. 241, 242 & note 9 (1995).

[10]China uses a grading system, which divides cultural relics into "precious cultural relics" and "ordinary cultural relics." The first category is divided into three classes. Rating Standards for Cultural Relic Collections, 4.9.2001, *available* at LEXIS PRCLEG 1829. The grading system, which predates the 2002 CPLR, applies to archaeological artifacts (and to all other cultural relics) for the purpose of setting standards of care in public institutions and other purposes; it now also applies to other types of cultural relics as part of the regulation of trade and export. The use of this grading system for these various purposes seems to have produced some confusion in the relevant literature. Grade 1 relics are subject to greater regulation. For example, Article 39 of the 2002 CPLR states that Grade 1 state-owned relics are recorded with the department of cultural relics administration under the State Council. Article 41 states that borrowing of Grade 1 relics requires approval of the department of cultural relics administration under the State Council. Article 48 provides that damage to Grade 1 cultural relics must be reported to the department of cultural relics administration under the State Council for investigation. This system is also relevant in determining the severity of the punishment meted out for violations of the law. For example, Article 264 of the 1997 Criminal Law, *supra* note 8, applies only to theft of "precious cultural relics." *See also* Dutra, *supra* note 4, at 91.

> [whether] the application of the import restrictions . . . with respect to archaeological . . . material of the State Party, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage . . . .

19 U.S.C. § 2602(a)(1)(C)(i). This requirement is probably the most complex of the four determinations because it embodies several elements.

The first step is to analyze actions taken by other nations, regardless of whether they are parties to the 1970 UNESCO Convention, to prevent the import of or trade in illegally exported Chinese archaeological artifacts. There are now 106 States Parties to the 1970 UNESCO Convention [Edit. Note: A 107th country, Venezuela, has since become a party.], and these include many of the world's largest market nations such as the United Kingdom, Switzerland, Japan, France, Italy, Australia, and Canada. Several other significant market nations are either considering ratifying the Convention (such as Germany) or on the verge of signing the Convention (such as Belgium), which signifies the nation's intention to ratify soon. The largest markets for Chinese cultural artifacts have been identified as Britain, the United States, France, Japan and South Korea.[11] All of these nations are now party to the UNESCO Convention.

Many of these nations, such as Australia and Canada, have enacted domestic implementing legislation that automatically prevents the import of illegally exported cultural materials from other States Parties. These nations have therefore *already* implemented restrictions that are *similar* to, albeit much broader than, any import restrictions that would be imposed by the United States pursuant to the CPIA.[12] Switzerland has enacted implementing legislation that establishes a system of bilateral agreements, which is similar to the United States' CPIA system.[13]

The United Kingdom has implemented the Convention through creation of a new criminal offense. This legislation criminalizes the dealing in archaeological objects that are excavated contrary to local law. Thus, since unlicensed excavation is prohibited in China and the products of all excavations are the property of the nation, it is clear that anyone who knowingly deals in or transports archaeological objects from China is violating this statute. Thus, although the United Kingdom has chosen a different method of implementing the UNESCO Convention, this legislation is aimed at controlling the same problem of illegal excavation.[14]

China was one of the first nations to accede to the 1995 Unidroit Convention on Stolen and Illegally Exported Cultural Objects, of which there are currently twenty-three other States Parties, including Italy. Several nations, most notably France and Sweden, are considering or are in various stages of ratification of this convention. Unlike the UNESCO Convention, the Unidroit Convention focuses on requiring nations to create private rights of action for recovery of stolen and illegally exported cultural objects. Of greatest significance in the context of China's request is Article 3(2), which recognizes all illegally excavated archaeological objects as stolen property, when this is consistent with local law where the illegal excavation took place. This offers a potentially powerful legal tool for China to recover looted archaeological materials from the other States Parties.

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[11] *Cultural Property Forum, supra* note 7 (comments of Wang Li Mei).

[12] These restrictions are much broader because they apply to *all* illegally exported cultural materials and are therefore not restricted to archaeological materials that are older than 250 years or to specifically designated categories of archaeological and ethnologic materials. See, e.g., Canada Cultural Property Export and Import Act, R.S.C. 1985, c. C-51, § 37; Australia Protection of Movable Cultural Heritage Act 1986.

[13] The most significant difference is that the Swiss bilateral agreements do not have an automatic termination date. Federal Act on the International Transfer of Cultural Property, Article 7, *available at* http://www.kultur-schweiz.admin.ch/arkgt/kgt/e/e_kgt.htm.

[14] Dealing in Cultural Objects (Offences) Act 2003, 2003 Ch. 27, Articles 1 and 2(2), *available at* http://www.uk-legislation.hmso.gov.uk/acts/acts2003/20030027.htm. This provision applies regardless of whether the illegal excavation occurs in the United Kingdom or in a foreign country. Importation of archaeological or ethnological materials in violation of a CPIA bilateral agreement does not result in criminal liability (unless some other law is also violated). The only consequence for violation of the CPIA is the forfeiture of the materials at issue.

". . . even if another nation with a significant import trade is not taking similar actions, the United States may impose its own import restrictions if the U. S. restrictions would still be of substantial benefit in deterring the pillage."

In assessing the third determination, it is also necessary to keep in mind the exception provided in the statute, as follows:

> Exception to restrictions. Notwithstanding paragraph (1), the President may enter into an agreement if he determines that a nation individually having a significant import trade in such material is not implementing, or is not likely to implement, similar restrictions, but –
> (A) such restrictions are not essential to deter a serious situation of pillage, and
> (B) the application of the import restrictions . . . in concert with similar restrictions implemented, or to be implemented, by other nations (whether or not State Parties) individually having a significant import trade in such material would be of substantial benefit in deterring a serious situation of pillage.

"It is in the interest of the United States to grant assistance to other nations under the UNESCO Convention in preserving their archaeological heritage . . . "

19 U.S.C. § 2602(c)(2). In accordance with this exception, even if another nation with a significant import trade is not taking similar actions, then the United States may impose its own import restrictions if the U.S. restrictions would still be of substantial benefit in deterring the pillage. This means that if there is a significant trade in looted Chinese archaeological materials in the United States, then preventing the import of such materials would be of significance in deterring or reducing the incentive to loot archaeological sites in China.

China has previously sought and received assistance from other countries in repatriating looted archaeological objects. Probably the most spectacular example is the relief chiseled out of the tomb of Wang Chuzhi of the 10th century and offered for sale by Christie's in New York (See cover photo and Fig. 1, "Introduction"). The relief was recovered and returned to China under Section 308 of the CPIA, which prohibits the import of stolen cultural property that has been documented in the inventory of a museum of another State Party.[15] China has also recovered cultural objects smuggled into Britain and New Zealand.[16]

China's request satisfies the most essential elements of the second and third (as well as the first and fourth) determinations required to support its request for a bilateral agreement restricting the import into the United States of looted and illegally exported archaeological materials. China has in the past participated in numerous examples of cultural interchange that do not threaten its archaeological heritage and a bilateral agreement will only help to further such mutually-beneficial cooperation. It is in the interest of the United States to grant assistance to other nations under the UNESCO Convention in preserving their archaeological heritage because we all gain from the increased understanding of our shared past that results from such preservation.

[15] Dutra, *supra* note 4, at 63-64. The recovered relief is only one of ten that were stolen from the tomb. China also recovered four container loads of stolen cultural objects that were intercepted by U.S. Customs in Seattle in 1997. *Cultural Property Forum*, *supra* note 7.

[16] *Id.* China also persuaded the Miho Museum in Japan to return a Buddha head without legal action. *Id.* Murphy recounts seizures of illegally exported artifacts in the early 1990's by Hong Kong officials. Murphy, *supra* note 9, at 242-43.

STATEMENT TO THE CULTURAL PROPERTY ADVISORY COMMITTEE

CINDY HO*

PRO

My name is Cindy Ho. I am the Founder of SAFE (Saving Antiquities For Everyone). SAFE is a group of volunteers from all walks of life dedicated to raising public awareness about the importance of preserving cultural heritage worldwide and addressing the destructive effects of the illicit antiquities trade.

I am not an archaeologist, a scholar or a collector. I happen to be of Chinese ancestry, but I speak to you as a member of the American public and a citizen of the world. And it is in this capacity that I urge you to grant China's request for import restrictions on archaeological and ethnographic materials your full support.

I founded SAFE in May 2003, shortly after news broke about the ransacking of Iraq's museums. Even though I am unfamiliar with Islamic culture or Iraq's heritage, I viewed the looting of the Baghdad Museum as a wake-up call, not just for Iraq, but for endangered cultures everywhere. The destruction brought about by the global trade in illicit antiquities is enormous by any measure. According to the U.S. National Central Bureau of INTERPOL, "The annual dollar value of art and cultural property theft is exceeded only by trafficking in illicit narcotics, money laundering, and arms trafficking." Yet the looting and smuggling of cultural heritage is no less destructive, because the damage it causes to developing nations and our knowledge of history cannot be undone.

Once an artifact is ripped from the ground, most of the knowledge it contained is lost – forever. Once a nation is robbed of its most precious non-renewable resource, its cultural heritage, it is gone – forever. All mankind becomes poorer in the process, no matter where we live, where we were born or where our ancestors came from. It is with this same sentiment that I came here today, to speak in support of China's request.

When ancient artifacts are trampled on by looters in their violent attempts to get to more beautiful pieces that bring in more money, or tossed about because they are not "important" enough or sufficiently "marketable," a little piece of my identity – and

* Cindy Ho is the founder of Saving Antiquities For Everyone (SAFE).

the identity of every one of us – is trampled on and tossed about. Without the knowledge that these artifacts can impart, they are simply curious items that may or may not appeal to one's aesthetics.

When a robber blasts open an ancient tomb with explosives in Chifeng, Inner Mongolia, what is stolen along with the jade, stone, silver, lacquer and pottery, is the irreplaceable insight. . .countless details that can only be gathered by archaeologists that illustrate how my ancestors – our ancestors – lived, what they ate, how they farmed, how they thought and what they did.

As we know from countless news and Chinese government reports, looting is rampant throughout China: the Ancient Tombs at Reshu in Qinghai Province, the Zhao Mausoleums in Hebei, Loulan and Niya in Xinjiang, and Jingzhou in Hubei. The list goes on. In all, more than 220,000 tombs in China have been violated over the past five years, according to a 2003 report.

According to He Shuzhong, Director of China's National Administration of Cultural Heritage, the banks of the Yangzi River that once inspired China poets and painters for centuries are now pitted with more than a thousand looters' holes.

An article in *Taipei Times* reported that, "In 2002 Chinese customs authorities intercepted 8,780 of relics [sic] prohibited from leaving the country and that was just the tip of the iceberg... Customs officials check only 5 percent of goods destined for overseas." [1]

The article concluded with "One of the most famous smuggled objects, a bronze "bonanza" tree made during the Han Dynasty nearly 2,000 years ago, fetched $2.5 million (USD) and was unearthed in the Three Gorges area of southwestern China. It was sold to an American billionaire."

What compels these Chinese people to break open coffins and tear apart mummies for money when capital punishment is the usual sentence for such crimes? The answer: poverty, ignorance, and greed fueled by the global trade in illicit antiquities. This trade is driven by a huge appetite for the exotic and beautiful – particularly in Western countries, such as the United States.

The U.S. market for Chinese antiquities is enormous, as we can see in the five catalogs from Christie's and Sotheby's spring and fall 2004 Chinese art auctions. Twice a year, these two auction houses offer up thousands of pieces of archaic bronzes, ceramics, lacquer, stone, textiles, scroll paintings and calligraphy, gilded books, wall hangings, architectural panels, porcelain, and other works of art. The total sales that year in these antiquities from Sotheby's alone amounted to over $15 million. That's how big the market is.

The per capita income of a Chinese farmer is $254, according to the National Bureau of Statistics. If one night's digging can earn a farmer what amounts to a year's worth of toiling in the fields, the monetary reward is an irresistible lure. To the farmer, the fact that the farmer's earning is a mere fraction of what the objects can fetch in the U.S. market is immaterial.

In Hannah Beech's "Spirited Away," the 2003 article from *Time* magazine (Asia edition), a looter from the outskirts of Luoyang was paid $70 for a tri-color statue that sold for $18,000 in New York. He was arrested and executed for the crime. This could happen anywhere in the world.

The pillaging of archaeological sites and the trade of illicit antiquities are not uniquely Chinese. Many other culturally rich countries suffer from the same problem, so much so that that they have requested –and were granted – import restrictions on antiquities from entering the U.S. In fact, beginning with El Salvador, a total number of eleven countries have been granted this request.

[1] *Taipei Times*, "Ancient artifacts under threat, government says," December 22, 2004, p. 5.

Why? Because the most direct way of removing the incentive to loot is to sever the chain of supply and demand. Imposing import restrictions on Chinese antiquities into the U.S. removes a huge outlet for these treasures. They will diminish the incentive to loot in order to satisfy the urge to possess yet another piece of Chinese porcelain in a rich man's home.

Bilateral agreements work. That is why countries such as Peru and Italy and Mali – and now China – request them, and more importantly, why the U.S. grants and renews requests for them when the situation warrants. Unless we think there is something inherent in the Chinese make-up that makes them unworthy of our assistance, it would seem natural to grant this same request to China.

Import restriction through bilateral agreements has a track record of success. In this room just last year, Professor Malcolm Bell spoke about how a similar agreement with Italy has brought about improvements to protecting that country's cultural heritage. President Bush himself spoke of the positive outcomes from the agreement with Peru. Indeed, since the MOU with the U.S. in 1997, almost 300 valuable artifacts have been returned to Peru. Dr. Dougald O'Reilly, Director of HeritageWatch, Cambodia, wrote me just yesterday, that "U.S. import restrictions have worked in other countries...and that auction sales of Khmer antiquities have dropped since the introduction of import restrictions to the USA." In fact, the number of Khmer artifacts entering the United States after 1999 dropped nearly 80%.[2] There is no reason why similar successes won't result from an agreement with China.

What China has in common with these other countries that have been granted the request for import restrictions is a long, rich cultural history. There's much to loot, much to desire, much to lose, but above all, still much to gain. Since China – the second largest country in the world – is many times larger in size than these individual countries, there is just that much more at stake.

Most of the ancient history of China is unknown because it is still unexcavated. One of the biggest archaeological mysteries in China is the joint tomb of China's only Empress Wu Zetian, and her husband Emperor Li Zhi. Called Qianling, it is the only tomb in China that holds two emperors and the only Tang tomb that has not been looted. It has yet to be excavated because for half a century, the proper time to excavate Qianling has been heavily debated. While the Chinese government is concerned about security and looting, archaeologists are eager to study the buried artifacts, which are tantamount to completing our knowledge of the Tang Dynasty. Attempted robberies – although presumably thwarted – have made everyone uneasy.

What is buried in Qianling will remain forever unknown if the pillage in China continues. We will never know what the ancient bamboo tablets with ancient inscriptions had to tell us just as the stories of daily life are lost when cylinder seals from Ancient Mesopotamia are looted. Nor will we ever understand the history of the ancient Northern People, the Chu Culture, much like the Vicús people of Peru, whose culture we know little about because of the illicit antiquities trade.

Bilateral agreements call for scholarly exchange and joint archaeological excavations. Granting China's request could be a step towards unlocking Qianling's mysteries. Already, China and the U.S. have many joint excavation and study programs in Hebei, Henan and Jiangxu provinces. The preservation projects in Dunhuang have been carried out for a long time with Japan, and more recently, with the U.S., but there is so much more to be done.

Signing the bilateral agreement is a good-faith effort on the part of the U.S. to encourage more exchange. The benefit to American scholarship is considerable. It helps our museums and institutions financially as well, as popular loan exhibitions of properly excavated antiquities have shown. It is the best way to bring the wonders of the China to a broad public audience. After all, as beneficiaries of a common shared cultural heritage, everyone can enjoy and learn from the

[2] The number of artifacts being sold by Sotheby's dropped 78.26%.

past, not just a select few who can afford to buy these objects for their private viewing.

Looting and the illicit antiquities trade are man-made problems. This means that as humans, we can at least to try to stop it. Isn't this the reason why China is asking for our help? To put an end to – or at least try to stem – the destruction of China's most valued non-renewable resource: its 7,000-year cultural heritage? China is asking for a chance, and as an American, I urge the Committee to recommend granting China's request for help.

This is the right thing to do, both ethically and legally, in the global effort to protect the world's cultural heritage. According to Classical Archaeologist Dr. Marina Papa-Sokal, the U.S. was in 1983 the first major art-importing country to ratify the 1970 UNESCO Convention on illicit trade in antiquities. The 1970 Convention now has more than 100 state parties including France, the UK, Switzerland and Japan. Why not take the lead now by granting China's request?

I would now like to present to the Committee these petitions that SAFE has gathered from our Website, representing the public's support of China's request. Thank you for this opportunity to testify.

REQUEST FOR BOOKS

Before discarding art reference books—particularly catalogues raisonnés—please contact IFAR to see whether we might be able to use them for our library.

STATEMENT TO THE CULTURAL PROPERTY ADVISORY COMMITTEE

KATHERINE LEE REID*

CON

I am Katherine Lee Reid, Director of The Cleveland Museum of Art. I have spent my professional career as a curator, deputy director and director of what is termed "a universal art museum." My positions have included curatorships at the Toledo Museum of Art, the Smart Museum at the University of Chicago, the Ackland Art Museum at the University of North Carolina, and Assistant and then Deputy Director at the Art Institute of Chicago, Director at the Virginia Museum of Fine Arts, and now in Cleveland. While my expertise is in post Renaissance European Art, I have experience in Asian Art, especially in Japan and China. Every museum in which I have worked has collected and done exhibitions in Asian Art. My father, Sherman Lee, involved me in his own activities as Director of the Cleveland Museum of Art and as an Asian Art expert.

The Cleveland Museum of Art has one of the finest collections of Chinese art and antiquities in the United States. This collection, begun in the earliest years of the museum's almost ninety-year history, was created in large part through acquisitions, acquisitions made over decades under the direction of directors and curators who have added significantly to the understanding, scholarship and appreciation of the culture and arts of China. Cleveland, the United States and the world have been enriched and informed by this collection, which is admired and studied by many, including generations of Chinese scholars The collection, is, however, not static, but rather vibrant and continues to grow and evolve through new acquisitions. If museums such as Cleveland can no longer acquire examples of one of the world's great civilizations, collections will lose a vital part of their value to the United States and the world, the ability to add new insights and new areas of knowledge and understanding of China and its cultural heritage. Perhaps even more important they will lose the ability to add to the discourse between cultures that can only be found in a museum with a comprehensive, diverse collection, one that is constantly growing and evolving.

The Committee has before it a request of immense scope both in terms of the centuries involved and the types of objects. If granted in its current form, collecting Chinese antiquities and cultural objects, ancient and "modern," will be severely curtailed, if not eliminated. Such a result would be a blow to museums like Cleveland that preserve, display, study and explain works of importance. The public, who are the constituency of our museums, will lose a

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central element of these great museums – the ability to grow and evolve, to adapt through acquisitions to new research and new discoveries that broaden and enhance our understanding of the Chinese culture.

We acknowledge and applaud the legitimate interest of countries to protect and preserve their cultures and to study *in situ* examples of those cultures that are discovered through excavation. China has immense numbers of archaeological objects unearthed every day. We encourage China to create a legitimate method for allowing a trade in these objects, both domestically and by export. Such a trade can help to preserve and protect cultures that are in danger of destruction through modern construction, illicit excavation and haphazard discovery. Other countries with significant and ancient cultures have been able to do so. Japan is an excellent example. Furthermore, while China appears interested today in the protection of many types and eras of its culture, history, even recent history, has not always demonstrated such sensitivity. Vicissitudes of government, war and religion have led to destruction or simply neglect of cultures and objects which, but for their preservation in museums like Cleveland, would be lost to the world.

"The Committee has before it a request of immense scope both in terms of the centuries involved and the types of objects. If granted in its current form, collecting Chinese antiquities and cultural objects, ancient and 'modern,' will be severely curtailed, if not eliminated. Such a result would be a blow to museums . . . ."

To single out the problem of illicit exports to the U.S. does not fully reveal the economic reality of Chinese cultural relics – an issue not really addressed in the Request of the Republic of China for a bilateral agreement imposing U.S. import restrictions on Chinese cultural relics.

Moreover, due to the growth of market forces in China, the internal demand for cultural relics – evident in the art sales in China and Hong Kong – appears to be growing much stronger than the demand from without. Thus the U. S. import restrictions may not resolve the tensions of economic forces that have been exacerbating the problems. And if such restrictions are not applied by ALL market nations, the situation will not be remedied, especially if effective enforcement measures are not implemented by China, the source country.

For these reasons, before the United States acts, consideration should be given to whether steps cannot be taken by China to assist in the protection of cultural property. Perhaps the most important step is developing a meaningful licit market for cultural relics, one that is not only available domestically but also to those from outside China. Currently, objects of high quality are available for domestic, but not international, acquisition, an approach that does nothing to discourage the illicit foreign market. Allowing China more time to define and develop this market before imposing U.S. import restrictions seems logical. China can and should develop appropriate criteria for domestic protection. For example, immovable relics that are site-specific – such as sites of ancient cultures, ancient tombs, architectural structures, cave temples, paintings and carvings on walls – should be protected and their sale restricted or prohibited. As for movable relics – such as metal works, ceramics, sculptures, paintings, calligraphy, textiles, lacquer wares, wood and bamboo objects – even though they may be recovered archaeologically, trade, both domestic and foreign, can be allowed and controlled by legal means. The criteria of assessment can be based on the uniqueness, quality, and relative significance of a particular piece in the context of

the surviving examples of the same type currently protected in China. The effectiveness of the Japanese model – which allows the export of works of high quality that are not unique or irreplaceable – is worth following. Paradoxically, the success of Japan in protecting cultural heritage is accompanied by an art trade policy that is generous, rational, and effective.

We support the continuing collaboration between the great institutions of China and those here in the United States. Since its founding, The Cleveland Museum of Art, through the display, study and research of works from China, has contributed to the understanding and appreciation by those here in the United States and abroad of China, its people and their immense creativity, and we are committed to continuing to do so. We recommend that the committee proceed cautiously with this request while encouraging the Chinese government to modify its immense breadth and depth, rather than ask the Committee to do so, and implement any request only in conjunction with a sincere commitment by China to create and maintain a legitimate and significant trade in cultural objects.

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For additional information, please call (212) 391-6234 or go to www.ifar.org.

STATEMENT TO THE CULTURAL PROPERTY ADVISORY COMMITTEE

MARC F. WILSON*

CON

Thank you very much for allowing me to appear before you on behalf of the Nelson-Atkins Museum of Art and the Association of Art Museum Directors. I would like to offer points of analysis as you consider the above request. What surely is not at issue is the right of any nation to protect its cultural heritage and to manage how it is to be deployed domestically and how it might be shared with the peoples of other nations in the interest of mutual understanding, which is one of the pillars of international harmony in a world shrinking almost month to month. The importance of this issue may be of far greater consequence than is commonly imagined. If not handled well, the people of the United States and the institutions entrusted with helping our people understand our international neighbors will be cut off from the best means and avenues to understand and appreciate others. One need only invoke memory of the total embargo on the importation of Chinese goods, including antiques and works of art, that was enacted during the McCarthy era after the establishment of the People's Republic of China. Our museums, which are the principal avenues of adult learning in our nation, suffered irreparable harm, and the understanding and appreciation of the Chinese people suffered. The former has never been recouped, while the latter has taken a very long time to make up. This is not a good situation for our nation and its people when learning to deal with the world's next great superpower.

"What surely is not at issue is the right of any nation to protect its cultural heritage . . ."

First, a word about myself and my credentials. I have been fortunate to have studied with many of the greatest of our American scholars in Chinese art history. At Yale University these included K.C. Chang in ancient Chinese archaeology, and Arthur Wright and Jonathan Spence in history, and Nelson Wu and Aschwin Lippe in Chinese art history. I learned Chinese with the support of our federal government's

* Marc F. Wilson is the Director/CEO of the Nelson-Atkins Museum of Art, Kansas City, Missouri.

National Defense Foreign Language program, whose name speaks volumes about strategic needs. I have also been mentored by several other greats in our country: Sherman E. Lee and Wai-kam Ho at the Cleveland Museum of Art, and the greatest of them all, Laurence Sickman, my predecessor at the Nelson-Atkins Museum of Art, and author of the classic Pelican series volume, *The Art and Architecture of China.*

Of note is the fact that I was officially employed for two years in 1969 and 1970 as a civil servant in the government of the Republic of China (Taiwan). I was attached to the Department of Calligraphy and Painting of the National Palace Museum, which is the world's largest collection of Chinese art. In addition to translating eight major publications on Chinese art, I assisted the museum in modernizing and professionalizing its exhibitions and publications. I also served as the Director's extemporaneous translator. I feel very privileged to say that I was selected to serve as the secretary to Yeh Kung-ch'ao, former Ambassador to the United States and United Nations.

In addition to lecturing in Chinese and doing television programs in Chinese, I have also recorded in Chinese programs for the Voice of America for broadcast to the people of mainland China. I hope that in some way these broadcasts helped the people of China understand better the people of our country at a time when our understanding of one another was severely hampered.

My relationship with members of the cultural offices of the Chinese government and with staff members of China's museums began during those years of difficulty, first in 1974 and 1975 when I served as the American specialist curator for the first "ice-breaking" blockbuster exhibitions from China, *The Chinese Exhibition: The Exhibition of Archaeological Finds of the People's Republic of China.* Since then I have maintained very close relations with successive generations of staff at these Chinese institutions, including those nominally cited as originating this request. I was an invited guest of the Chinese government in 1977 and toured numerous museums and cultural sites at a time when internal politics were still very scary.

The Nelson-Atkins Museum of Art is among the foremost generators of exhibitions and publications about Chinese art and culture. *Eight Dynasties of Chinese Painting: The Century of Tung Ch'i-ch'ang;* and *Golden Age of Chinese Archaeology* are among the most important. Recently my museum published with Yale University Press the definitive work in Chinese archaeology of the last fifty years. This work is encyclopedic and is the grand summation in any language of what has been accomplished in the field of Chinese archaeology in modern times. This has been ten years in the making and represents an investment of one million dollars. Few museums anywhere in the world would make such a commitment to understanding ancient China through the fruits of archaeology.

The word pillage is a strong word, connoting indiscriminate destruction. To those of us who have dedicated our lives to the preservation and exposition of the best of mankind's artistic achievement, the idea of wanton, indiscriminate destruction of archaeological sites and cultural monuments evokes horror. I fully respect and support China's right to preserve its cultural heritage, and I also believe that the behavior of our museums must not undermine sincere efforts on the part of the Chinese to stop whatever illegal pillaging of archaeological sites threatens its ability to manage its cultural heritage.

It must be pointed out that many of the categories of materials for which the Chinese government seeks import restrictions have not come down to us today through forms of archaeological preservation. Archaeological provenance applies to virtually all products of material culture from Neolithic times through the Tang Dynasty (618–906), with the exception of Buddhist sculpture in stone and bronze, much of which has survived above ground in abandoned religious sites often used by local peasants for animal husbandry needs. The balance of the list, including especially paintings, calligraphies, high-fire porcelains, decorative metal utensils, sculpture,

jewelry, costumes, textiles, lacquer wares, carvings in bone, horn, ivory and jade and items made of wood and bamboo, including furniture, have been preserved through normal collecting and heritage practices above ground. For the last one thousand years, many of these categories have been produced by Chinese manufactories and artisans to satisfy a prosperous international trade. Porcelain wares, whether decorated or plain monochrome, were shipped to foreign markets in large cargo vessels, each capable of carrying tens of thousands of pieces. Because they have been prized, these wares survived as heirlooms in such far flung markets as Indonesia and Holland.

At various times in the past, the Chinese themselves have shown disregard for segments of their heritage, often wiping out major parts of their cultural heritage, or have simply sold items which they did not esteem to foreigners who found interest in them.

Implicit in China's resort to Article 9 of the UNESCO Convention of 1970 is the contention that the international art market provides a major impetus to those who would pillage archaeological sites in search of capital goods that likely have an archaeological origin. Having observed the international market for thirty years as a potential buyer of items of importance, I have not found items of capital importance making their way to international market centers in any alarming number. In the last decade, for example, I have seen not more than ten items of likely archeological provenance that I would deem of capital importance, and in one case only would I deem the object better than anything of its kind held in Chinese government collections. In the balance of the cases, Chinese government collections hold comparable or superior examples many times over. The great bulk of the trade, moreover, is made up of minor items, seldom of a caliber suitable for museums of any kind and very often heavily restored. In short, even at the upper end of the trade, the number of items of capital importance amount to no more than a handful.

How have the art market and the art world, including dealers and museums, behaved when a work can be shown to have been stolen from a site or repository? In every instance of which I am aware, and I believe that is all of them, the work has been returned promptly to Chinese authorities. This has happened recently with two tenth century sculptures from a very important tomb. The carved slabs were for sale in New York, one through a private dealer and one through a well-known auction house (see cover photo and Fig. 1, "Introduction"). Both slabs were returned to China without question or hesitation by the parties involved. There are other such examples, not many, but some. When the art market or museums have learned of such a theft, the honorable and right thing has been done.

As one thinks about art markets as stimuli for illegal depredation of archaeological sites, it is critical to acknowledge that the international market for high-end items has been shrinking while the domestic market in China has been heating up to a red-hot state. The time was when our country had many more collectors, and museums, actively acquiring Chinese works of art of all kinds, especially works of great importance. Most of those were not of archaeological provenance or if so, not of recent archaeological provenance. The U.S. embargo on all Chinese goods enacted after the establishment in 1949 of the People's Republic of China meant that nothing of recent archaeological provenance could enter our country. Besides, between 1949 and the late 1970's nothing of any consequence or inconsequence in the way of antiquities or art got out of China's borders. This demonstrates clearly that the Chinese can stop trade should they wish. But as one reconsiders illegal archaeological work, we must be mindful that grave robbing to recover items of intrinsic value (precious metals and stones) or of cultural/artistic value (ancient bronze vessels and jades) has been going on in China for over 2,000 years. China's first great historian, Sima Qian (145-86 b.c.e.) complains of grave robbers looting tombs of ancient grandees in search of precious items, among them ancient ritual vessels. Throughout history, internal, domestic demand in China has fueled grave robbers looking for marketable items. Interestingly enough, many items placed in ancient Chinese tombs with the deceased were

"Between 1949 and the late 1970's, nothing of any consequence or inconsequence in the way of antiquities or art got out of China's borders. This demonstrates clearly that the Chinese can stop trade should they wish."

not thought to be collectable. Still today the Chinese have little interest in collecting items made specifically for burial, such as clay tomb figurines, which are so popular with buyers in the occident.

There can be no doubt that the domestic Chinese market is fueling the demand for artistic works. In addition, how has China's newfound wealth impacted its position in the international art market? Two or three decades ago, European, American and Japanese buyers commanded the top tiers in the international markets for Chinese works of art. The clear trend of the past decade shows decreasing market share by non-Chinese buyers and increasing share from Chinese buyers both public and private. Chinese government institutions, such as the Shanghai Museum or the Palace Museum, Beijing, are not at all disadvantaged in the international market for Chinese goods. China's major museums are able to muster mighty sums, greater certainly than American or European museums, to acquire Chinese works when they wish. Last year, 2004, the Shanghai Museum paid over one million U.S. dollars at an auction in New York for a calligraphy by the great Yuan Dynasty artist Zhao Mengfu (1254-1322). That museum has been very active in the international art market acquiring through agents from auction houses and private dealers around the world. The Palace Museum, Beijing, has been similarly active but on a lesser scale. The Red Army's fine Poly Museum has been very active acquiring from all sources within both international and domestic markets. In addition, we have witnessed an explosion of private buyers who must have unlimited supplies of funding because they vie with one another in bravado bidding to set new records.

The financial prowess of the Chinese in the international markets for Chinese art and goods of material culture has resulted in the reversal of the flow of items for sale. Rather than a one-way flow out of China, we now see a flow from old sources in America, Europe and Japan back to China for sale in newly re-established domestic art markets, which boast growing auction firms conducting multi-million dollar sales in China's larger cities. I am aware of important Chinese works of art that were in collections in our country for a very long time returning to China entering collections there or selling at public auction because better prices can be obtained. While one can hardly begrudge the Chinese the return of an important work, there can also be no doubt that in the future we will see it as a loss to our own cultural heritage.

Several factors must be taken into account when trying to assess the Chinese internal capabilities to stop the looting of archeological sites in the first place and then at the borders of the nation in the control of exports. China maintains the world's largest archaeological apparatus. There is an archaeological bureau in every county of the nation. The personnel of these bureaus work hand in hand with local police to assure that discoveries are reported immediately and that sites are protected. No other nation in the world has so large or capable a network.
Nor may it be said that the Chinese lack the police or customs bureaucracy to control the export and even the internal transport of goods. We have seen ample evidence that Chinese central authority is able to crack down on something that displeases it and to do so as thoroughly and as effectively as it wishes in order to achieve its goals. Can the Chinese control and stop trade in items of real importance to them? The answer is, yes. Evidence of that may be found in the fact that we have not seen one single important painting or calligraphy come out of China since 1949, while paintings and calligraphies of real

"There can be no doubt that the domestic Chinese market is fueling the demand for artistic works . . ."

importance have gone back to China. Why? Because above all else, the Chinese still attach highest value to painting and calligraphy and much less to Buddhist sculpture, decorative jades, and furniture or bronze vessels without inscriptions. China's old, traditional preferences and prejudices that confer degrees of value are still very much alive and at work today.

If the Chinese can control illegal traffic in cultural and artistic property, why don't they? Because it has become very profitable for many private and government entities well connected to political power. As China's domestic market has mushroomed, so has the money made from it. Those having a stake past and present have powerful connections. This is not to say that all of this involves corruption, but there is widespread lack of accountability to the letter of the law.

The request from the Chinese regrettably suffers from contradiction borne of current practice. It is quite legal for a foreigner to purchase and export antiques more than 250 years old from government authorities from sites to be flooded by the Yangtze River dam project. Three years ago, friends from federal and provincial cultural bureaus helped my museum locate historic houses that my museum could purchase for disassembly and removal to Kansas City. Warehouses in Fujian Province are full of antique chairs and tables waiting to be shipped and exported legally to foreign markets. These entities are usually a partnership between private individuals and government-backed business extensions.

Finally, there is some current background activity that must be taken into account in considering the Chinese request. The growing domestic market in China is mushrooming, even exploding. It will get bigger and so will the stakes. Those who can control it stand to profit mightily. For example, China has announced that it plans to build 3,000 new museums by the year 2011. Can they do it? Yes. Do they have the goods? Yes, in government storerooms. After all, if one Han Dynasty (206 b.c.e.-220 c.e.) tomb contains 40,000 identical or nearly identical equestrian warrior figurines, what is the difference if a few are sent to new museums and some find their way abroad? That is the thinking. But just as the Chinese look forward to developing their domestic auction network to handle a burgeoning demand for art, we see signs of the same sorts of monopolistic control that we have seen elsewhere. Exceptionally restrictive requirements seem likely to be imposed on foreign firms. I am also aware that there is growing demand from those who control or have large interests in China's internal art market to allow categories to be sold that heretofore have been restricted, such as bronze vessels and ancient jades that surely have recent archaeological provenance. Given the power of those involved, it is likely that restrictions will be eased. If potentially competitive markets can be eliminated, the internal Chinese market will become less competitive at a time when demand is rising.

What could the United States do in a truly altruistic vein to help ease illegal pilfering and looting of archaeological sites, whether induced by internal Chinese market demand or international market demand? We must encourage the Chinese to adopt a system similar to that established by the Japanese that ranks critically important works. The highest level "national treasure," simply cannot be exported, period. The next level down, "important cultural

"If the Chinese can control illegal traffic in cultural and artistic property, why don't they? Because it has become very profitable for many private and government entities well connected to political power. As China's domestic market has mushroomed, so has the money made from it."

"... we must be wary of allowing well-intentioned conventions and people of good will from becoming pawns in a power struggle between central and regional authority in China."

property," may not be exported unless an exception is made under rare circumstances upon application to the Bunkacho. Artworks under contract for sale for export must get an export license from the Bunkacho. If the item is deemed to be important to the preservation of national heritage then it is retained and purchased by a Japanese museum or by the Japanese government itself. But the Japanese take a liberal view and understand well the importance of having works of fine quality and importance represent the highest artistic achievements of their civilization in foreign metropolises. China must be encouraged to adopt a similar strategy, one that befits a rising superpower, rather than a struggling third world nation.

In the meantime, we must remind ourselves that China among all civilizations has the worst record of preserving its cultural and artistic heritage. And, we must also be wary of allowing well-intentioned conventions and people of good will from becoming pawns in a power struggle between central and regional authority in China.

LETTERS TO THE EDITOR

REMINDER

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STATEMENT TO THE CULTURAL PROPERTY ADVISORY COMMITTEE

JAMES CUNO*

CON

My name is James Cuno. I hold a Ph.D. in the history of art and architecture from Harvard University and am the President and Eloise W. Martin Director of The Art Institute of Chicago. Previously I have served as Professor and Director of the Courtauld Institute of Art, University of London and Professor and Director of the Harvard University Art Museums. I have served as Trustee and President of the Association of Art Museum Directors, and am a Fellow of the American Academy of Arts and Sciences. I have written and lectured frequently on the subject of U.S. art museums and the ethical, legal, and political circumstances of collecting antiquities; many of these lectures and publications were sponsored by law schools, including Harvard, the University of Connecticut, The Benjamin Cardozo School of Law, Yeshiva University, and Washington University. I edited and contributed an essay to *Whose Muse? Art Museums and the Public Trust* (Princeton University Press, 2004).

I am writing in response to the request from the Government of the People's Republic of China to the Government of the United States of America under Article 9 of 1970 UNESCO Convention for the implementation of import restrictions of archaeological artifacts proposed to have been pillaged from archaeological sites.

"The request is unreasonable and should be rejected for being too broad . . ., unenforceable, and unlikely to achieve its stated goal."

It is my belief that the request is unreasonable and should be rejected for being too broad (including but not limited to all metal, ceramic, stone, painting and calligraphy, textiles, lacquer, bone, ivory, and horn objects from the Paleolithic Period to the Qing Dynasty, or nearly 2 million years of human artistic production), unenforceable, and unlikely to achieve its stated goal.

*James Cuno is the President and Eloise W. Martin Director of The Art Institute of Chicago.

The request states that the pillaging and smuggling of cultural artifacts (it does not distinguish between archaeological and cultural artifacts) is rampant and destructive to Chinese and world heritage. In so doing it assumes that all such material was pillaged from and caused damage to archaeological sites resulting in the loss of knowledge. The latter may not be the case, as such material, particularly the easily transportable material like textiles, ceramics, painting and calligraphy, were often made for the market and have circulated in the trade since the Han Dynasty more than 2,000 years ago.

Equally, it presumes that restricting imports of such material to the U.S. will stop or at least significantly reduce such pillaging and smuggling. This will not be the case so long as there are markets for such material elsewhere in the world, including within the People's Republic of China. The booming trade within China for the material covered by the request is well known and has been reported widely in the world's press. Only a few major collectors need be mentioned here to make the point: Mr. Xu, an eel tycoon, is reported to be negotiating with the Ningbo government to exhibit his collection of Chinese artifacts worth an estimated 12 million GBP. Chen Lihua, chairman of the real estate company, Fu Wah International Group, has built a private museum to house her collection of furniture. The Beijing Huaye Real Estate property developer is reportedly planning to open a museum for its collection. Perhaps the best known is the Poly Museum, which opened a few years ago and has ties to the Chinese military. These domestic collections are having an effect. They are diminishing the export of Chinese cultural artifacts abroad, reversing the trend of the past century, which saw much of this material going to public and private collections in Europe and North America. But they are not diminishing the alleged pillaging and smuggling. As long as there is a market for such material somewhere, and certainly as long as that market is within the borders of China, restricting the import of such material into the United States will not have the effect desired by the Chinese government's request.

The request will have one effect: it will reduce the opportunities U.S. citizens have to study carefully and frequently the art and cultural production of China, one of the world's oldest, largest, and soon, once again, richest and most powerful cultural, economic, and political forces. Restricting the international trade in such material is to promote nationalist retentionist cultural policies. These hold that whatever one country claims to be its vital cultural patrimony should by rights remain within the borders of that country (a modern political entity). The irony of this with regard to China is obvious. Over millennia, "China" has increased and decreased in territorial size and enlarged and reduced the number of ethnic groups that comprise "China." China today is very different from the "China" of most of the periods covered by the Chinese government's request. For thousands of years, China has been a particularly potent example of what anthropologists call "hybridity," or the ways that peoples in a developing society grab ideas, objects, and technologies from a more developed society and reshape them to suit their local needs.

"The request will have one effect: it will reduce the opportunities U.S. citizens have to study carefully and frequently the art and cultural production of China . . ."

Hybridity acknowledges the political construction of identity. What is "Chinese" is what the current Chinese government claims it to be. For students and scholars, identity is much more complicated and dynamic. As Edward Said has written, "every domain is linked to every other one, and . . . nothing that goes on in our world has ever been isolated and pure of any outside influence." Said makes this point

in the 2003 preface to his book, *Orientalism*. There he also makes the very powerful point that we

> who by force of circumstance actually live the pluri-cultural life...it is incumbent upon us to complicate and/or dismantle the reductive formulae and the abstract but potent kinds of thought that leads the mind away from concrete human history and experience and into the realms of ideological fiction, metaphysical confrontation and collective passion. Our role is to widen the field of discus sion, not set limits in accord with the pre vailing authority.

This is the role played by museums, such as those in the United States most likely to be affected by the Chinese request for import restrictions. Art museums in the United States are public trusts working to acquire, preserve, and present the world's artistic legacy for the public's benefit. In acquiring works of art, such as those on the Chinese government's list, U.S. art museums are bringing into the public domain works of art that are already alienated from their "find spots" (should they have ever had them, in an archaeological sense) and that would otherwise remain in private circulation. By acquiring, presenting, and publishing them, U.S. art museums encourage knowledge of them and their location. By holding them in the public's trust, U.S. art museums are preserving them for all of time.

"Restricting the international trade in such material is to promote nationalist retentionist cultural policies.

U.S. art museums have proclaimed their opposition to the pillaging of archaeological sites and the illicit trade in cultural property and antiquities. Yet, U.S. art museums are dedicated to the proposition of collecting representative examples of the world's artistic legacy for the benefit of U.S. residents and foreign visitors to U.S. art museums to study individual traditions within the context of other traditions. To restrict the licit international trade in works of art is to diminish the possibilities of this benefit. Of course, temporary exhibitions can be mounted (and the Chinese government, as it points out in its request, has been generous in this regard). But such exhibitions are indeed temporary, and the millions of visitors to U.S. art museums, a very high percentage of which are schoolchildren, are likely not to have seen them. The benefit of a museum's permanent collection is just that: it is permanent, always there for repeat visits over the course of a lifetime. Of course, too, U.S. citizens can go to China to see the objects included in the request. But, realistically, what percentage of our citizens will be able to make such a visit and, in any case, what is the benefit of seeing those objects in isolation from related objects from other cultural traditions as one can in our encyclopedic museums (Tang ceramics and sculpture in the company of Mayan, Byzantine, and classical Indian art, as an example)?

As Neil MacGregor, director of the British Museum, wrote recently:

> All great works of art are surely the common inheritance of humanity...This is a truth that is surely more important to proclaim now than ever before. In a world increasingly fractured by ethnic and religious identities, it is essential that there are places where the great creations of all civilizations can be seen together, and where the visitor can focus on what unites rather than what divides us."

In order to protect archaeological sites in China and promote international understanding, I suggest that the Chinese government actively encourage joint excavations and the tradition of sharing of finds

(*partage*). Since the middle of the 20th century, most "source" countries have passed legislation prohibiting the exportation of excavated objects, claiming them to be state property. The recent, excellent exhibition, *Treasures from the Royal Tombs of Ur* from the collections of the University of Pennsylvania Museum of Archaeology and Anthropology and the British Museum, comprised objects excavated in what is now Iraq and acquired through *partage* some eighty years ago. The great Assyrian and Mesopotamian collections of the University of Chicago's Oriental Institute Museum are the result of *partage*: very little has been added to them since Iraqi laws put an end to sharing archaeological finds around 1970. American museums are eager and willing to share expertise, technology and costs with source countries that will allow for scientific excavation and documentation of important sites in exchange for a sharing of the findings.

In response to the Chinese government's request that the U.S. government limit the importation of the categories of objects cited in its request, I propose that rather than requesting sweeping import restrictions, the Chinese government request protection only for those objects in danger of pillage *and only on the condition* that it establish and show evidence of encouraging collaborative excavations and the sharing of finds with U.S. teams and museums.

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STATEMENT TO THE CULTURAL PROPERTY ADVISORY COMMITTEE

EMILY J. SANO*

CON

My background is entirely in the study of Asian art history and in museum work. Since 1979, I have been a curator and educator at the Kimbell Art Museum in Fort Worth, Texas, and at the Dallas Museum of Art, and more recently an art administrator at the Asian Art Museum of San Francisco – where I have been the director since 1995. In those capacities, I have managed or organized numerous exhibitions of Chinese art, including *The Great Bronze Age of China* (1981), *Painters of the Great Ming – the Imperial Court and the Zhe School* (1993), *Tomb Treasures from China: The Buried Art of Ancient Xi-an* (1994), *The Golden Age of Chinese Archaeology* (2000), as well as exhibitions of Chinese paintings and decorative arts, such as ceramics and glass. The Asian Art Museum is currently planning a major exhibition of the art of the Ming dynasty (1368-1644) for 2008.

The Asian Art Museum board of trustees and staff, as well as my colleagues in the United States, share a deep concern for the preservation of arts in their countries of origin. We decry looting and the loss of essential information that comes from uncontrolled and undocumented excavation. We all want to see China preserve the material of its glorious past. But numerous circumstances in China make this an unusual situation.

The current proposal to restrict the import of Chinese art to the United States is too all encompassing. Logistically, such a blanket ban on the import of Chinese archaeological material to the U.S. is highly problematic; it would most likely fail to achieve its stated conservation goals, and, at the same time, it will have a profound negative impact on our mission to lead people to understand and appreciate Chinese art and culture.

CONDITIONS OF DISCOVERY, MANAGEMENT, AND LOOTING

The Asian Art Museum's Senior Curator of Chinese Art, Dr. Michael Knight, brings special insight to the issues of preservation of China's cultural and archaeological history.[1] As his research revealed, archaeology in China depends largely on happenstance and unskilled workers. Even after

* Emily J. Sano is the Director of the Asian Art Museum, San Francisco.

1 This summary of Dr. Knight's observations draws on both his many years of experience in the field, as well as data drawn from his research in 1983-1989 for his doctoral dissertation: *Bronze to Lacquer: Changes in Preferred Media in the Arts of the Kingdom of Chu*, Columbia University, 1992.

discovery, China lacks sufficient resources for the conservation and protection of artifacts in storage. While Dr. Knight shares the concern of his colleagues over looting, his research found that the West is not the principal market for looted objects. Finally, a legitimate, controlled market for artifacts actually supports the preservation and conservation of important objects by China's own museums and cultural institutions.

The vast majority of archaeology in China today takes the form of "rescue" excavations. Construction workers often discover important and previously unknown sites during ordinary excavations, such as preparation of a railway bed or digging foundations for new housing developments. To keep projects on schedule, workers often unearth objects hurriedly and under very difficult, uncontrolled circumstances. This happens almost on a daily basis in China.

"The looting of Chinese archaeological sites is a serious problem. But only a very small percentage of the objects looted from Chinese sites ever appear in Western markets, and only a small fraction of that comes to the United States."

Although their numbers are increasing, China still has relatively few trained archaeologists. Those few archaeologists have the responsibility for exhuming and caring for the tremendous amount of new material excavated throughout China annually, much of it coming from underdeveloped areas. These archaeologists, of necessity, draw on whomever they can find for labor – prison labor gangs, off-season agricultural workers, and so on – almost none of whom have training or interest in archaeology. Needless to say, this kind of excavation damages many pieces, and it is almost impossible for the archaeologists to enforce standard excavation and documentation practices and techniques.

An example serves to illustrate the amount of activity that might occur in a single area: from the late 1970's to the early 1980's, Chinese excavated well over 2,000 late Bronze Age tombs along the central Yangzi River basin. More than 700 tombs of these excavations occurred in a single season at the burial site at Yutaishan, outside Jiangling in Hubei province.[2] While many of these tombs were small, some were enormous. The tomb of a minor noble of this area and period excavated in the 1980's contained 10 metric tons of bronze as well as thousands of works in wood and other materials.[3]

Dr. Knight's research regarding storage and conservation in regional museums shows that following excavation, the objects remain very much at risk. The great wealth and economic development of China in recent years has focused almost exclusively along its east coast. Many of the regional museums responsible for the care and storage of recently excavated materials are in China's interior, where they remain under-financed and totally overwhelmed by the burgeoning volume of objects in their care. Much of the archaeological material in the care of these regional museums winds up in improper storage, from which it is eventually lost through theft or exposure to the elements.

The looting of Chinese archaeological sites is a serious problem. But only a very small percentage of the objects looted from Chinese sites ever appear in Western markets, and only a small fraction of that comes to the United States. The strongest markets and largest collections of looted material exist in Hong Kong and China itself. Indeed, a private museum in Beijing has recently set world record prices in its purchases of ancient bronzes and sculpture.

With such a strong local market, banning import into the United States would have little or no impact on looting. Forbidding the sales of legitimately excavated objects often adds to this problem, rather

2 See *Jiangling Yutaishan Chumu*, Beijing: Wenwu Chubanshe, 1984.
3 See *Zenghou Yi Mu*, Beijing: Wenwu Chubanshe, 1989.

than controlling it. When the government makes the entire market in artifacts illegal, it also forces looters to resort to the most expedient and destructive techniques and also encourages them to seek out and take only the most valued materials.

Limiting access to Chinese culture exclusively to exhibitions poses problems for museums and the public. Organizing an exhibition from China is extremely expensive and difficult. The Chinese government sets stiff monthly fees for the "rental of the objects that travel outside its borders. When a show organizer considers conservation, packing, shipping, travel, maintenance, delegations and couriers, insurance, and other expenses, its minimum out-of-pocket expenditure for any exhibition is typically $1,000,000 (USD) or more. The recent show of Chinese antiquities at the Metropolitan Museum of Art (New York), called *China: Dawn of a Golden Age, 200-750 AD*, is said to have cost $4.5 million.

And even for those able to travel to China, access to artifacts there remains problematic. Many of the great archaeological discoveries are in China's remote regions and not easily reached by foreign travelers. Because of their limited resources, many regional museums in these remote areas lack adequate staff, and have sub-standard facilities. Conditions are so poor in many that they regularly display copies, rather than genuine items. Indeed, the select sale of duplicate or surplus materials could provide regional institutions with much-needed revenue to better preserve and display important objects. Of course, the Chinese would need to establish strict guidelines and carefully monitor all such sales. Establishing a legitimate market could actually *lessen* the market for looted materials.

MODELS EXIST TO ALLOW FOR CONTROLLED ART EXPORT

I concur with my colleagues who encourage all nations to actively seek a system that gives them control over their own artistic heritage. Specifically, I feel that it is of the utmost importance that our colleagues in China take proper responsibility for the preservation of their own art.

"I urge China to establish a system of evaluation that permits the legitimate export of artifacts for sale abroad."

I urge China to establish a system of evaluation that permits the legitimate export of artifacts for sale abroad. The model with which I am most familiar governing the licensed sale of traditional arts is the one established by the Agency for Cultural Affairs (the Bunkacho or the "Agency") in Japan, and I believe it suggests a better solution for how to address Chinese materials. The Japanese established their program to control export of cultural objects in the early 20th century, and it has functioned successfully for the last 100 years. The Bunkacho, part of the Japanese government's Ministry of Education, administers the program, which has jurisdiction over items that the Bunkacho regards as part of the nation's cultural patrimony. Their system has clear rules and penalties, which Japanese art professionals and antiques dealers know extremely well.

While protecting cultural patrimony, the Bunkacho's regulation nonetheless fosters a market for Japanese art that remains very lively, both internally and internationally. The Agency's purview includes the evaluation and care of the country's important artistic heritage, and it regulates the movement of all art in and out of the country. Dealers and collectors have learned to recognize the types of objects potentially questionable for export from Japan. It is standard practice that dealers will have appropriate experts at universities, museum and art professionals on the staff of the Agency for Cultural Affairs, review any special items that come into their hands from private sources.

The Agency is familiar with the availability of certain objects and can determine for a particular object whether its export is in the country's interest.

Such decisions involve consideration of the object's importance, value, quality, and uniqueness. I experienced the Japanese program first hand when, as a curator at the Kimbell Art Museum, I was fortunate enough to have funding to purchase Asian art for the collection. I have requested – and on separate occasions both been refused and granted – an export permit for an item that I sought to purchase. Under the Japanese system, if the government refuses to grant an export permit, the Agency must purchase the piece. The occasion when I received permission to acquire a special object and take it out of Japan, the Agency allowed the Kimbell to buy a signed piece of 13th century Buddhist sculpture. The Agency gave its permission primarily because both the object was not so scarce in number or type as to have been critical to Japanese collections, and also because the object was going to a public museum in the U.S. The Japanese government felt that the sculpture's presence in a public collection assured its long-term care and promoted the spread of Japanese art and culture abroad. This kind of sale can represent net benefits to both the exporting and purchasing countries.

THE MARKET IN ART HAS VITAL IMPORTANCE TO MUSEUMS

As a museum director, I work with numerous donors and board members whose interest in the Asian Art Museum originated in a casual purchase abroad of an Asian object or painting. While traveling, for example, one might stumble upon a shop in Jakarta or Bangkok or Tokyo, buy something that appeals – usually not too expensive (maybe a couple of thousand dollars) – and bring it home. A desire to know more about that acquisition then led them to the Asian Art Museum, where specialist curators helped them to identify the object and understand its nature, context, significance and relative importance. For some, that initial, casual interest also led to museum membership, a growing interest in the art of Asia, and support for the museum exhibitions and programs to expose others to similar art at the museum.

"Import restrictions that discourage all collecting will put a chill on American interest in Chinese art."

Mr. Jack Bogart, Chair of the Asian Art Commission and Foundation from 1996-2004, began in just such a fashion. He came to the museum to learn more about objects he acquired in Indonesia, and went from joining what we call the Connoisseurs' Council, to joining the board, and eventually became our very successful board chair for the campaign and construction for our new home in San Francisco's Civic Center.

It would be very unfortunate if the United States were to impose restrictions on import that discourage the sincere interest of individuals in studying, understanding and pursuing aspects of Asian art and culture. Personal involvement in collecting deepens respect and understanding. A blanket restriction would make it harder for people to get personally involved in learning about Asian art, and that would be detrimental to museums across America. Our museums, even our public museums, depend on individual donors for both the money and art to promote in our missions to educate and enchant. And at the Asian Art Museum, with our dedication solely to Asian art, we feel especially vulnerable.

Import restrictions that discourage all collecting will put a chill on American interest in Chinese art. Hence, the individual supporters of museums and their programs will be less inspired to make contributions to support expensive exhibitions from abroad and their attendant educational and promotional programs.

CHINA IS BETTER SUITED THAN THE U.S. TO REGULATE CHINESE ARTIFACTS

The legitimate sale of objects controlled by the Chinese government would allow them to decide exactly which things they really need to restrict, while also allowing them to realize the economic benefit of international sales. We museum professionals know from our colleagues in the Chinese State Administrative Bureau of Cultural Heritage that they have considered how they can control export, and we encourage them to continue. But it should not be the United States' place to tell the Chinese how to regulate their cultural heritage. The Chinese are tremendously intelligent and well-organized. They have the most accurate knowledge of the rapidly evolving inventory of cultural resources, and the ability to control their own heritage. No end is in sight to the accidental discoveries of historic sites, nor is there any way to calculate how many tons and cubic meters of materials China will uncover in the next 50 years.

While it is a complex task and a large country, I am confident that China has the ability to work out a system appropriate to itself, and I encourage them in their efforts. Neither the American government nor its customs agents can ever become as well-versed in Chinese art as the Chinese themselves. Indeed, for years my museum's Chinese department had received an average of three calls annually from the United States Customs agents seeking our expert help. While we can assist with questions over a single object and whether it is a genuine antique, we have neither the staff nor resources to examine large numbers or groups of objects. I question whether or not the American public should support the additional cost to annually train and maintain cadres of customs specialists for all the periods of Chinese art covering the last five to seven thousand years.

Responsibility for patrolling the export of Chinese art should remain with the Chinese, who are the most qualified for the task and the best able to define the purposes and extent of regulation required.

STATEMENT TO THE CULTURAL PROPERTY ADVISORY COMMITTEE

JAMES J. LALLY*

CON

Thank you for giving me an opportunity to speak to you today.

Please allow me to very briefly introduce myself. My name is James Lally. I have been professionally involved in the field of Chinese art for over 35 years, and for at least a decade before the start of my professional career, I was an avid amateur and student of Chinese art. I worked for Sotheby's from 1970 through 1985, organizing and conducting Chinese art auctions in New York and Hong Kong and attending every Chinese art auction in London throughout that period. Since 1985 I have operated my own Chinese art gallery and advisory service in New York, working with private collectors and museums in America and around the world. In short, I have been involved with Chinese art on a daily basis throughout my adult life, and I have had as much direct experience of the international art market as anyone in the world.

I understand the importance of your responsibility, and I hope that I can offer you facts and insights which will be useful in your deliberations.

I feel very fortunate to have been able to be so closely involved with Chinese art all my life. I grew up near Boston, and my interest in Chinese art was inspired by the great collections at the Museum of Fine Arts in Boston and the Grenville Winthrop Collection at Harvard.

Looking back at the situation in the early 1960's when I was first taking an interest in China, it is no exaggeration to say that I found and pursued an interest in Chinese art in spite of the best efforts of the United States and the Chinese governments. At that time mainland China was closed to Americans, and inside China, during the long ascendancy of the Red Guards, the Chinese government sponsored a policy of systematic destruction of cultural property combined with vilification and persecution of the intellectuals and collectors who owned or tried to preserve or study anything from China's past. In America during the 1960's, access to Chinese art was further curtailed by federal regulations imposed during the McCarthy era stipulating that no Chinese art could be imported without documentary proof that it had never belonged to a Chinese communist.

It was possible for me to see and be inspired by Chinese art only because of the quality of the Chinese

* James J. Lally is President, J.J. Lally & Co., New York.

collections established by the good efforts of private collectors and museum curators in America.

No one cares more about the protection and preservation of Chinese cultural property than the private collectors and museum curators who have built the great museum collections of Chinese art in America, and yet we are being told by some observers that American art collectors and American curators active in the world art market are the root cause of the problem of illicit digging and smuggling of art.

The argument in favor of a U.S. Customs embargo against undocumented art is based squarely on that premise:

> If American collectors and curators are the major stimulus for illicit digging in China,
>
> Then cutting off the American market will stop or greatly reduce illicit digging in China, allowing archaeologists to work undisturbed.

By reducing the question to a consideration of only two variables: the art market in America vs. the archaeologists in China, the argument leads to an obvious conclusion. But the world in which we live today defies such simple analysis.

"American collectors and curators . . . represent only a fraction of the world market [for Chinese art today] and a declining fraction at that."

First it is important to recognize the fact that Chinese art is the most international of all art market categories, with a strong and very active following throughout Europe and Asia. When I first became aware of the world market for Chinese art, London was the most important center for Chinese art sales, but by the end of the 1960's, London's dominance began to decline.

The era of jet aviation brought the Japanese into the London market in the late 1960's, and in a very short time they became the dominant buyers of Chinese art in the world market. The depth, diversity and sophistication of the market for Chinese art in Japan now is well known. The number of dealers, collectors and museums actively engaged in the Chinese art market in Japan today is several times greater than the corresponding number in America, yet the Japanese are no longer the dominant buyers in the international Chinese art market.

The Japanese remain very active but they have been eclipsed in numbers and in dollar volume by wealthy Chinese collectors of Chinese art. The first major Chinese buyers of Chinese art were in Hong Kong, where the market developed very rapidly in the 1970's and 1980's. Soon the Hong Kong Chinese were joined by the Taiwanese as the Chinese art market developed steadily in the Far East throughout the 1980's and 1990's. During the last ten years, the rising wealth and new economic freedoms in mainland China have created a new group of wealthy Chinese collectors of Chinese art who are very active inside China, and these new mainland Chinese buyers are setting records at auctions around the world.

In short, the story of the last 35 years in the Chinese art market has been a steady rise in Asia and a steady decline in relative market share for London, Europe and America, and that trend has been accelerating over the last five years.

American collectors and curators active in the market for Chinese art today represent only a fraction of the world market and a declining fraction at that.

The proposal under consideration calls for the imposition of restrictions only on U.S. collectors and institutions. No other country has been asked to impose the same restrictions, and the most important market countries such as Japan and Taiwan would not seriously consider an embargo such as the Chinese have requested.

In a wide open world market not subject to any restrictions, and with a thriving market rapidly expanding inside China, the elimination of only the American buyers of Chinese art will have no practical effect.

Sotheby's and Christie's have been mounting auction sales of Chinese art in Hong Kong for over thirty years, and throughout that time they have imported into China far more art than they have exported.

During the last decade, with the active participation and support of the Chinese government, the Chinese art auction business has developed throughout mainland China, and the sales growth inside China has been expanding at an exponential rate.

Despite the very rapid development of the market on the mainland during the last decade, Hong Kong is still a very active trading center in China and one of the busiest Chinese art market cities in the world today. There are many sophisticated and wealthy Chinese collectors in Hong Kong; there are dozens of Chinese art galleries and shops; and major auction sales are conducted by Sotheby's and Christie's in Hong Kong twice annually. The Chinese government in Hong Kong imposes no restrictions on the art market in Hong Kong and allows unrestricted exports from Hong Kong. How can U.S. Customs deny permission for entry into America of Chinese art which has been officially declared and legally exported from Chinese jurisdiction in Hong Kong? If buyers from Japan, Taiwan, and Europe can import freely from Hong Kong, what could be achieved by denying the same access to Americans?

The Chinese government's request for U.S. import restrictions is only one of several such requests submitted to this committee since the 1980's, but it is quite unlike any other request previously received from any other country. China is not a small "third world" country attempting to save and protect a few scarce cultural properties against external forces too strong to be resisted. The enormous quantity of cultural property produced in China over the last 5,000 years is unmatched anywhere else in the world.

The distinguished Asian art scholar Lothar Ledderose of the University of Heidelberg, when asked to deliver the annual Andrew W. Mellon Lectures in the Fine Arts here at the National Gallery of Art in 1998, chose to speak about the history of Chinese art. The title of his lecture series was "Ten Thousand Things: Module and Mass Production in Chinese Art." He discussed all kinds of Chinese artistic production, and as a fundamental characteristic of Chinese cultural property he highlighted the fact that ". . . the Chinese throughout history have produced works of art in astonishing quantities– and have done so without sacrificing quality, affordability, or speed of manufacture." As just one example he states that "In the seventeenth and eighteen centuries China exported more than a hundred million pieces of porcelain to the West." This is his estimate for only two centuries of production of Chinese ceramics, which has a continuous history covering more than fifty centuries, and his production figure for the seventeenth and eighteenth centuries covers only the porcelain exported from China at that time and does not include the production for internal Chinese consumption which must have been far greater. These facts are extremely important to your consideration of the world market for Chinese art, where Chinese ceramics account for more than two thirds of the volume, both in quantity and total value traded each year.

"The Chinese government in Hong Kong imposes no restrictions on the art market in Hong Kong and allows unrestricted exports from Hong Kong. How can U.S. Customs deny permission for entry into America of Chinese art which has been officially declared and legally exported from Chinese jurisdiction in Hong Kong?"

The history of China in the twentieth century is a chronicle of war, turmoil and revolution followed by more revolution. China has abandoned and destroyed more cultural property in the twentieth century than any other country in the world. In the world history of pillage and looting, the decade of the Red Guards in China stands out as the most highly organized and destructive campaign ever seen in modern times. More recently, in their single-minded pursuit of economic development, the Chinese government

has paid scant attention to the need for protection of cultural property. The Three Gorges dam project in Sichuan province has moved inexorably forward over three decades at enormous expense without any effective plan or serious funding for emergency archaeology in the area under threat. Official published reports estimate that over 1,200 known archaeological sites soon will be inundated by the water behind the dam.

And yet despite all this history, China has a large and expanding network of historical sites and museums which are filled to capacity with cultural property. China not only has tremendous quantities of art in its museums, it also has the undisputed claim to the finest quality material in every category. In my 35 years of close observation of the international market for Chinese art, the number of Chinese works of art seen in the market which are not duplicated or surpassed by items in Chinese museums is a tiny number. They can be counted on the fingers of one hand.

China today is one of the largest economies in the world. Its annual economic output is estimated to be $1.6 trillion and is projected to grow to $4 trillion by the year 2020. Furthermore, anyone familiar with Chinese history since the 1949 revolution knows that China lacks neither the political means nor the ability to impose internal controls and regulations, regardless of how unpopular such rules and regulations might be. The Chinese network of control throughout China extends down to the neighborhood level and is being constantly expanded. It was recently reported in the *International Herald Tribune* that the Chinese government has again increased its vigilance and control over the Internet.

The trade in Chinese art and artifacts of all types is a rapidly growing business inside China, and Chinese government policy in Hong Kong maintains an open and unregulated market in art and antiquities with established procedures for unrestricted export. If there is an emergency situation threatening the extensive list of art and antiques submitted by the Chinese government in their request for U.S. import restrictions, why have they not taken effective steps to prohibit trade in these objects inside China?

The Chinese request for import restrictions is extraordinarily broad, covering virtually every category of cultural property over 95 years old and including large categories which do not qualify under the definition of archaeological material set forth in the UNESCO treaty and the U.S. Cultural Property Implementation Act. Furthermore, the Chinese have failed to seek concerted action from other countries active in the world market for Chinese art, and they have failed to take consistent action to curtail and control the market inside China. The Chinese request clearly fails to meet the essential requirements which the U.S. Congress specifically included in the Cultural Property Implementation Act as prerequisites for U.S. action.

There is no question that the Chinese government has the right and the duty to preserve and protect its cultural patrimony. Furthermore, it is clear that the rapid pace of economic development in China, the disregard or misuse of historic sites and the illicit digging at archaeological sites in China all are major issues confronting those responsible for the preservation of China's cultural patrimony. These are serious problems which demand attention and cooperative action.

China has an enormous supply of cultural property, and they need to do more to establish positive programs to manage their extraordinary cultural resources. If the Chinese government established a well-organized program to protect key sites and monuments, including a coherent system for retaining the unique and historically significant works of art while permitting lawful trading in less important antiquities, I have no doubt that the international community of collectors, curators and dealers in Chinese art would support their efforts and cooperate with their program. But a plan for protection of the Chinese cultural heritage which is based on a rigid rule that anything over 95 years old cannot be exported is not reasonable, and it will not work.

The government and citizens of the United States should support and encourage effective programs which enhance the protection of China's cultural patrimony without cutting off access to the vast quantity of Chinese art and antiquities which are and should be available in free circulation inside China and around the world. In Japan and many other countries, orderly and efficient systems have been established to protect the national heritage while permitting internal and export trade in the majority of the cultural property found within their borders. China has the resources and the ability to develop a successful system to allow fair access to the Chinese art market not only for domestic Chinese buyers but also for foreign buyers, including all of us in the U.S. who cherish Chinese art and culture.

In China today we are witnessing the reversal of old confiscatory policies and prohibitions against private collecting. The Chinese government is now pursuing policies which encourage the art market and recognize the rights of private collectors inside China. It would be wrong and counterproductive for America to move in the opposite direction by adopting restrictions against U.S. collectors and institutions which are not enforced in China or anywhere else in the world.

The U.S. Customs alone cannot be held responsible for the orderly management of the market inside China and around the world. Under the present circumstances, without more effective programs and a realistic plan put into place and vigorously enforced by the Chinese government, an embargo to be enforced solely against U.S. buyers would only serve to reduce American interest in Chinese culture at a time when greater understanding and appreciation of Chinese civilization is vitally important. It would be harmful to China and harmful to America.

Thank you for your careful consideration of this important issue.

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Most items in this publication are registered in the database of the Art Loss Register, with its New York office at 20 East 46th Street, New York, NY 10017 and its London office at First Floor, 63-66 Hatton Garden, London EC1N 8LE.

The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

Anyone wishing additional information should contact the ALR at 212.297.0941.

STOLEN ART

PAINTINGS

148 PIERRE-AUGUSTE RENOIR (French, 1841-1919). *Tête de fillette.* See color photo on inside back cover.

149 JEAN-FRANÇOIS MILLET (French, 1814-1875). *Portrait of an Anonymous Man.* See color photo on inside back cover.

The following works of art were among two dozen paintings and works on paper along with numerous silver objects that were stolen from the Westfries Museum in Hoorn, The Netherlands on January 9, 2005. Burglars broke into the museum at night, knocking down doors and smashing display cases. See also, items 206 and 207 below. *L05.41:

150 HENRIK SAVRIJ (Dutch, 1596-1656). *View of Andijk*, c.1900. Oil on canvas. 37 x 51 cm. Inv. no. 11383.

151 JAN VAN GOYEN (Dutch, 1596-1656). *Landscape with Cart*, 1632. Oil on canvas. 94.5 x 126 cm. Inv. no. 00529.

152 FLORIS GERRITSZ VAN SCHOOTEN (Dutch, 1590-c.1655). *Kitchen Scene.* Oil on canvas. 112 x 178 cm. Inv. no. 00524.

153 JACOB WABEN (Dutch, 17th century). *Vanitas*, 1622. See color photo on inside back cover.

154 JACOB WABEN (Dutch, 17th century). *The Return of Hefta*, 1625. Oil on canvas. 103 x 163 cm. Inv. no. 12154.

155 MATTHIAS WITHOOS (Dutch, 1621/7-1703). *Harbour in Hoorn* (1). Oil on canvas. 63.5 x 100 cm. Inv. no. 13717.

156 MATTHIAS WITHOOS (Dutch, 1621/7-1703). *Harbour in Hoorn* (2). Oil on canvas. 65 x 101 cm. Inv. no. 01739.

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*Numbering for the year 2004 Cumulative Index of Stolen Art began with *IFAR Journal*, Vol. 7, no. 1.

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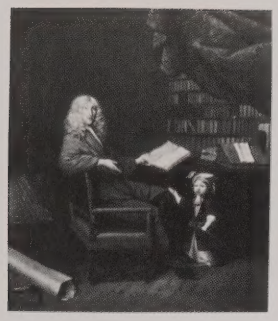

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157 JAN CLAESZ (Dutch, 1651-1719). *View on the Oostereiland (Hoorn)*. Oil on canvas. 93.5 x 127.5 cm. Inv. no. 18149.

158 STEVEN VAN DUYVEN (Dutch, op.1669-1683). *Portrait of a Lady*, 1679. Oil on canvas. 74 x 62.5 cm. Inv. no. 00704.

159 STEVEN VAN DUYVEN (Dutch, op.1669-1683). *Portrait of a Man*, 1679. Oil on canvas. 74 x 62.5 cm. Inv. no. 00703.

160 GERRIT POMPE (Dutch, 1655-1705). *View on Enkhuizen*. Oil on canvas. 92 x 153 cm.

161

162

161 HENDRIK HEERSCHOP (Dutch, 1620/1-p.1672). *Pharaoh's Cup*, 1652. Oil on canvas. 88 x 103 cm. Inv. no. 00719.

162 EGBERT LIEVENS VAN DE POEL (Dutch, 1621-1664). *Interior*. Oil on canvas. 25 x 32.5 cm. Inv. no. 00525.

163

164

163 HENDRIK BOGAERT (Dutch, 1626/7-1672). *Wedding Scene*, c.1671. Oil on canvas. 109 x 174 cm. Inv. no. 00528.

164 JAN LINSEN (Dutch, 1602/3-1635). *Rebecca en Eliezer*, 1629. Oil on canvas. 36.7 x 59.9 cm. Inv. no. 00573.

165

166

165 SALOMON ROMBOUTS (Dutch, p.1652-a.1702). *Winter Landscape*. Oil on canvas. 23.3 x 30.1 cm. Inv. no. 00523.

166 IZAAK OUWATER (Dutch, 1750-93). *Nieuwstraat in Hoorn*, 1784. Oil on canvas. 44.4 x 55.7 cm. Inv. no. 01575.

167 REINIER NOOMS (1640-68). *Seaview with Ships*. Oil on canvas. 37 x 49.5 cm. Inv. no. 00531.

168 CLAAS MOLENAER (Dutch, 1630-1676) *Winter Landscape*, 1647. Oil on canvas. 85 x 118 cm. Inv. no. 02183.

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169 THOMAS SIDNEY COOPER (English, 1803-1902). *Three Cows Beneath a Tree*. Oil on board. *L05.52. Stolen during a burglary in Tunbridge Wells, England in December 2004.

170 HERMANUS MELCHER TILMES (Dutch, 1874-1920). *Path in Wood with Two Passersby*. Oil on canvas. 47 x 35 cm. *L05.150. Stolen in The Netherlands in late November 2004.

171 DAVID VINKBOONS, School of (Flemish, 1576-1629/32). *Le passage du gue (Le jeu de L'oie)*. Oil on canvas. 72 x 101 cm. *L05.175. Stolen in Belgium in November 2004.

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172 T. LUNVOLD (19th century) *Black and White Terriers Looking into a Rabbit Hole*. (19th century). Oil on canvas. 14" x 18". *L04.1468. Stolen from a private residence in Christchurch, Dorset, England in September 2004.

173 JOHAN THOMAS LUNDBYE (Danish, 1818-1848) *View from a Bay*, c.1836. Oil on canvas. 36 x 48 cm. Stolen from a wall at Hotel og Konferencecenter, Hornbaek, Denmark on September 26, 2004.

174 CLAYTON SUMNER PRICE (American, 1874-1950). *Untitled (Abstract with Horses)*. Oil on panel. 19.5" x 23". *N04.255. One of two paintings by Price stolen from a private residence in California along with items 209 and 213 below.

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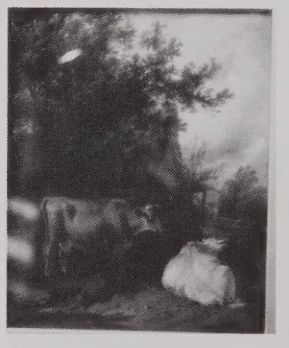

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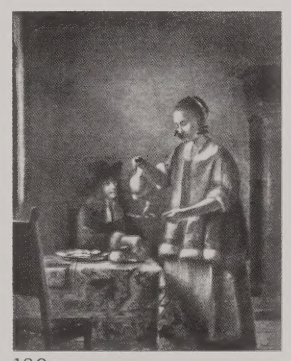

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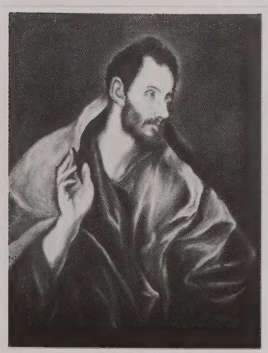

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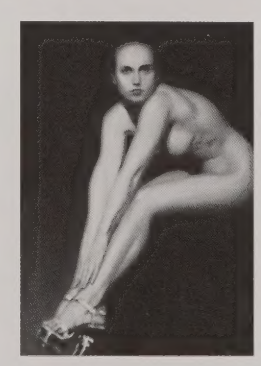

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175 FREDERIC REMINGTON (American, 1861–1909). *Cowpony Pathos*. Oil on canvas. 28" x 40". Signed l/r. *N04.202. One of nine paintings stolen from a private residence in Midland, TX on April 14, 1974.

176 JAVIER CIGAR ECHANDI. *Retrato de Emakume*. Oil on canvas. 30 x 25 cm. *L04.1450. Stolen from the Museo de Bellas Artes de Alava in Spain in October 2004.

177 JOHN ABSOLON (English, 1815–1895). *Two Young Women in Forest*. Oil. 48" x 34". *N04.277. Lost in transit in Gainesville, FL on December 15, 2004.

178 RON HICKS (American, b.1965). *Melancholy*. Oil on canvas. 7" x 5". Signed HICKS l/r. Stolen from Gallery 1261 in Denver, CO on February 12, 2005.

179 ROBERT LENKIEWICZ (English, 1941-2002). *Portrait of Lisa Stokes*. Oil on canvas. 92 x 122 cm. *L05.24. Stolen during a studio sale at Exeter in October 2004.

180 PIETER DE HOOCH (Dutch, 1629-1684). *Oyster Breakfast*, c.1629. Interpol no. 20050304900.

181 EL GRECO, STUDIO OF (Spanish, 16th century). *The Apostle Thomas*. Oil on canvas. 62.2 x 49.8 cm. Stolen from the Johannesburg Art Gallery in South Africa between June 29, 2002 and July 3, 2002. Interpol no. 20020913277.

182 SIDNEY BELL (American, 20th century). *Hanna*. Oil and acrylic on canvas. 30" x 24". *N04.266. Stolen from a frame shop in Hollywood, CA on August 15, 2004.

183 *Portrait of Man*, c.1825. Oil on canvas. 60" x 48".*L04.1536. Stolen in Shirehampton, Bristol, England on October 23, 2004.

183

The following two paintings by CIRCLE OF CANALETTO (Italian, 18th century) were discovered missing in London in July 2004. *L04.1549:

184 *The Grand Canal Venice: The entrance with the Dogana.* Oil on canvas. 17 3/4" x 29 1/2".

184

185 *Santa Maria della Salute Looking towards the Rialto.* Oil on canvas. 17 3/4" x 29 1/2".

185

The following two paintings were stolen from a private residence in Topanga, CA between October 23 and 29, 2004. *N04.270:

186

186 ODD NERDRUM (Norwegian, b.1944). *Sleeping Couple.* Oil on canvas. 43.25" x 39.5".

187 MIKHAIL ALEXANDROV (Russian, 20th century). *It Hurts Here.* Oil on canvas. 36" x 30".

187

188

The following two paintings were stolen in Romania on April 1, 2005. Interpol no. 20050405729:

188 NICOLAS GRIGORESCU (Romanian, 1838-1907). *Mountain Landscape with an Inn.* Oil on canvas. 30.4 x 45 cm.

189 CONSTANTIN ARTACHINO. *Vase with Zinnias.* Oil on canvas. 70 x 60 cm.

189

190

191

The following paintings were stolen from a private residence in Wiltshire, England in December 2004. *Lo5.139:

190 *Irish Landscape* (19th century). Oil on canvas. 20" x 24" (with frame).

191 NATHAN THEODORE, attrib. to (late 18th century). *Burleigh on the Hill.* Oil on canvas. 11½" x 32½".

192

193

192 J. J. HOUDON (French, 1741-1828). *The Old Castle near Mannheim*, 1839. Oil on copper. 8" x 10".

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193 EDWARD C. PRITCHETT (1828-1864). *The Piazzetta, Venice.* Oil on board. 12" x 9 1/2". *Lo5.209. One of two paintings stolen in Shropshire, England in February 2005.

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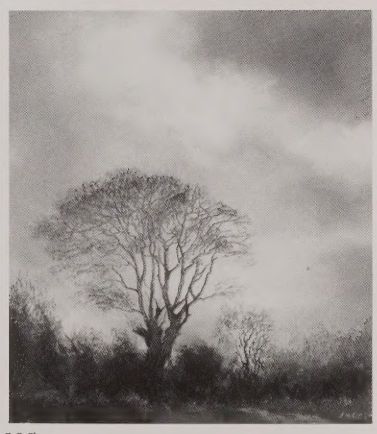

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194 JACK VETTRIANO (Scottish, b.1954). *The Last Great Romantic*, 1993. Oil on canvas. *Lo5.164. Stolen from a private residence in Surrey, England in February 2005.

195 JAMES MARTIN (English, 18th century). *Tree Study near Cornwood.* Pastel. 44 x 46 cm. *Lo5.179. Stolen from an art gallery in South Devon, England in December 2004.

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197

196 WILLIAM MALHERBE (American, 1884-1952). *Woman in Blue.* Oil on canvas. 32" x 25.5". *No4.234. Stolen from an art gallery in Los Angeles, CA between July 27 and August 4, 2004.

197 ERTÉ (ROMAIN DE TIRTOFF CONTÉ) (Russian/French, 1892-1990). *Untitled.* 36" x 34". *No4.229. Stolen from a private residence in Los Angeles, CA on August 24, 2004.

The following paintings were stolen from the Santo Spirito in Sassia hospital in Rome, Italy sometime before May 1, 2004. Interpol no. 20040914586:

198 GIROLAMO MUZIANO (Italian, 1528-1592). *Saint Jerome.* Oil on canvas. 47 x 34 cm.

199 IL CAVALIERE D'ARPINO (Giuseppe Cesare) (Italian, 1568-1640). *The Flagellation of Christ.* Oil on panel. 51 x 40 cm.

200 PARMAGIANINO (Girolamo Francesco Maria Mazzuoli) (Italian, 1503-1540). *The Holy Family.* Oil on panel. 82 x 58 cm.

201 PALMA VECCHIO (Jacopa Palma) (Italian, 1480?-1528). *The Holy Family.* Oil on panel. 62 x 81 cm.

202 LUIGI GARZI (Italian, 1638-1721). *The Baptism of Christ.* Oil on canvas. 44 x 63 cm.

203 *The Nativity* (Italian, 18th century). Oil on panel. 35 x 35 cm.

204 *Cupid* (Italian, 18th century). Oil on panel. 68 x 85 cm.

205 GRANEE, Attrib. to (Italian). *El Sermon de Cuaresma en la Iglesia Santa Maria in Traspontina*, 1808. Oil on canvas. 99 x 74 cm.

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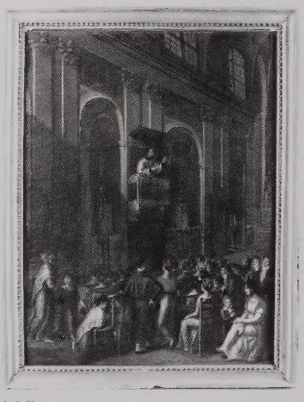

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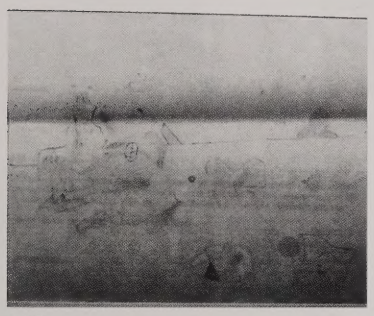

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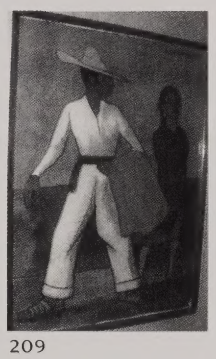

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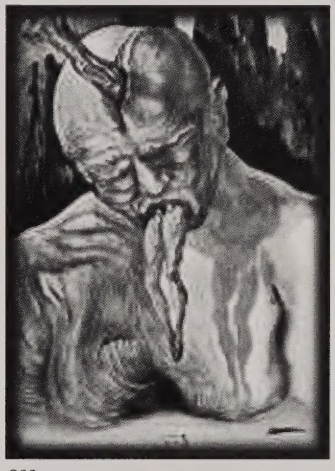

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WORKS ON PAPER

The following two works by Herman Henstenburgh (Dutch, 1667-1726), were stolen from the Westfries Museum in Hoorn, The Netherlands on January 9, 2005. *L05.41. See also items 150-168 above.:

206 *Still Life, memento mori*, 1698. Watercolor. 31.2 x 26.4 cm. Inv. no. 00574.

207 *Still Life*. Watercolor. 38.7 x 29.5 cm. Inv. no. 50400.

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208 ROBERTO MATTA (Antonio Sebastián Echauren) (Chilean, 1911-2002). *Untitled*. Pencil and colored pencil on paper. 27.6" x 33.6". *N04.247. Stolen from a private residence in Malibu, CA on July 14, 2004.

209 DIEGO RIVERA (Mexican, 1886-1957). *Man and Woman*. Watercolor. 15" x 10.5". *N04.255. Stolen from a private residence in California. See also items 174 above and 213 below.

210 JAMES ABBOTT MCNEILL WHISTLER (American, 1834-1903). *Standing Woman with Hat*. Watercolor. 5.7" x 2.5". *N04.221. Stolen from a gallery in Wilton, CT.

211 SALVADOR DALÍ (Spanish, 1904-1989). *A Logician Devil-Lucifer*. Illustration for Dante's *Divine Comedy*, 1951. Watercolor and pencil on paper. Dimensions unknown. Stolen along with other works by Dalí from an exhibition at an art gallery in Amberes, Spain on February 1, 2005.

MIXED MEDIA

212 UTAGAWA HIROSHIGE (Japanese, 1797-1858). *Moonlit Night on the River Tamagawa*. Ink and color on silk. 9.8" x 12.8". *N04.235. Stolen from a museum in Los Angeles, CA between June 7 and June 20, 2004.

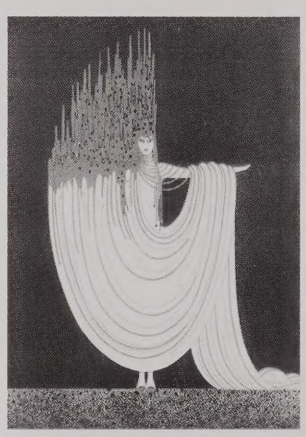
212

213

PRINTS, LITHOS, ETCHINGS

213 FERNAND LÉGER (French, 1881-1955). *Untitled (Man and Woman)*. Lithograph. 23" x 17.5". *N04.255. Stolen from a private residence in Woodside, CA sometime between October 4 and 6, 2002. See also items 174 and 209 above.

214 ERTÉ (Romain de Tirtoff Conté) (Russian/French, 1892-1990). *The Arctic Sea*, #285. Lithograph. 25" x 19". Stolen from a private residence in Los Angeles, CA on August 24, 2004. .*N04.229. See also item nos. 197 above and 226 and 227 below.



214

215

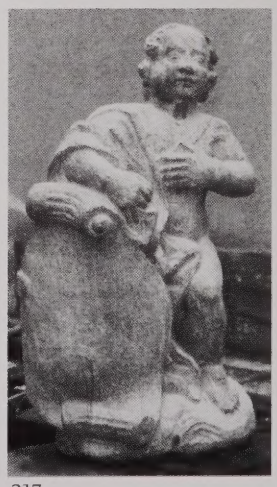
SCULPTURE

The following are two of four bronze statues by Martin Braniselj stolen from a gallery in Slovenia on February 15, 2005. Interpol no. 20050405124:

215 *Head of Bull*, c.2003. Bronze. 12 cm x 14 cm x 10 cm.

216 *Couple*, c.2003. Bronze. 12 cm x 14 cm x 10 cm.

216



217

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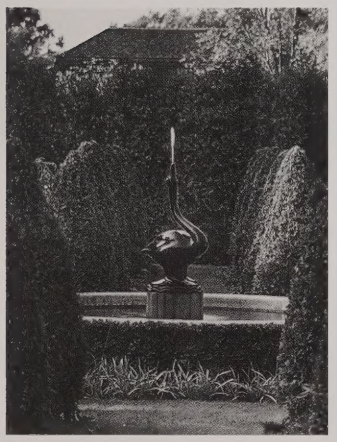
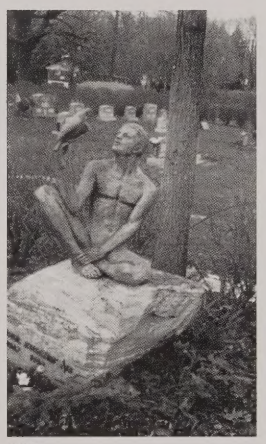
217 KELER F/N JAROSLAV (Czech, 20th century). *Angel*, c.2003. Red porphyry sandstone, Ht.: 80 cm. Stolen from St. John of Nepomuk church,. Bela, the Czech Republic between September 1 and 4, 2004. Interpol no. 20041116646.

218

219



220



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218 FERNANDEZ ARMAN (American, b.1928). *Small liberties born out of larger ones*. Bronze. Ht: 120". W: 24". D: 20". *N04.250. Reported missing in New York City on January 9, 2004.

219 WILLIAM ZORACH (American, 1887-1966). *The Bather*. Bronze with a dark green and black patina. Ht.: 15". W: 10". D: 7". Signed and numbered 3/6. *N04.230. Stolen from Gleason Fine Art in Boothbay, ME on August 17, 2004.

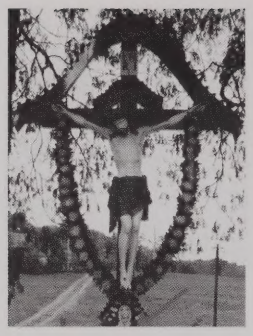
220 SYLVIA SHAW JUDSON (American, 1897-1978). *Swan*. Bronze. Ht: 3'. *N04.233. Stolen from a park in Highland Park, IL sometime between 2002 and 2004.

221 ROBERT CHARLES KOEPNICK (American, b.1907). *Boy with Dove*. Bronze. Ht: 4'. *N04.236. Stolen from a cemetery in Kettering, OH on June 2, 2004.

222 *Cherub* (18th century). Wood with gilding. 77 x 57 cm. Stolen from the chapel of St. Anne in Unicovice, Olomouc, Czech Republic sometime between September 2004 and February 17, 2005. Interpol no. 20050304585.

223 *Angel* (Czech, 18th century). Polychrome wood with gold and silver. Ht: 90 cm. Stolen from the portal altar of the church of St. Bartholomew in Boharyne, Hadec Kralove, The Czech Republic between June 29 and July 2, 2003. Interpol no. 20041218333.

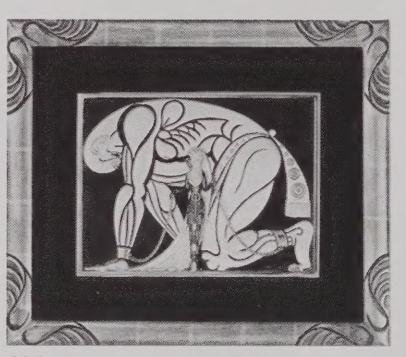
224 *Christ*, c.1945. Polychrome wood. Approx. Ht.: 140 cm. Stolen from a religious place in D. Slavecih, Slovenia between February 25 and February 28, 2005. Interpol no. 20050405816.



224

The following wall sculptures by Erté (Romain de Tirtoff Conté) (Russian/French, 1892-1990) were stolen from a private residence in Los Angeles, CA on August 24, 2004. See also item nos. 197 and 214 above.*No4.229:

225 *Samson and Delilah*. Bronze with gold leaf. 19.3" x 22.75".



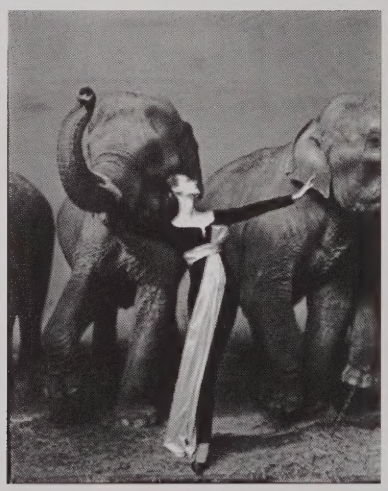
225

226 *Peccato Originale*. #486/499. Bronze. 23 1/2" x 21" with frame.

226

PHOTOGRAPHS

227 RICHARD AVEDON (American, 1923-2004). *Dovima with Elephants*. Gelatin silver print. 24" x 20". *No4.252. Stolen from a private residence in New York City on November 1, 2002.



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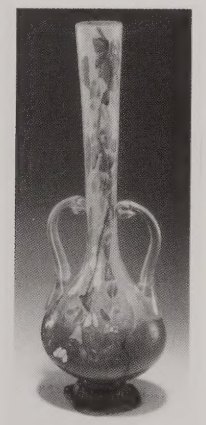


234

DECORATIVE OBJECTS

GLASS

The following 13 objects by EMILE GALLÉ (French 1846-1904) were stolen from the Musée de la Fondation Neumann in Gingins, Switzerland on October 27, 2004. *No4.273. Interpol no. 20041016321:

228 Vase *La Soldanelle des Alpes*, c.1892. Crystal with metallic inclusions and engraved decoration. Ht.: 11 cm. Signed "Emile Gallé fecit."

229 Small Vase *Soldanelle des Alpes*, c.1889. Double-layered glass with metallic inclusions. Ht.: 9.5 cm. Signed "Gallé."

230 Small Vase *Forme Soldanelle des Alpes*, c.1889. Glass decorated with engraving, enamel, gold, and silver. Ht.: 9.2 cm. Signed "Emile Gallé / Nancy."

231 Vase *Liseron d'octobre*, c.1891. Double-layered, engraved crystal. Ht. 18.8 cm. Inscribed "Liseron d'Octobre / Vous vous êtes penché sur ma mélancolie. Verlaine."

232 Vase *Hanneton*, c.1891-95. Glass with engraved decoration. Ht.: 15.5 cm.

233 Vase *Orchidées roses*, c.1891-95. Double-layered glass with powdered inclusions and engraved decoration. Ht." 16 cm. Signed "Gallé."

234 Two-handled vase *Glycine*, c.1898. Double-layered glass with glass inlays and bronze base. Ht.: 49.5 cm. Inscribed on the back "Douce /est / l'aurore /et / douces / sont / les / choses. / Victor / Hugo."

235 Two-handled vase *Glycine*, c.1898. See color photo on inside back cover.

236 *Dragonflies* Cup (Coupe *Libellules*), c.1904. See color photo on inside back cover.

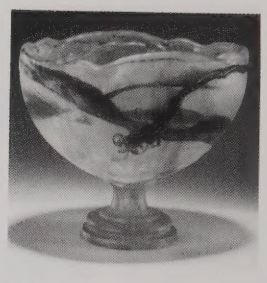
237 *Dragonflies* Cup (Coupe *Libellules*), c.1904. Multi-layered glass with engraved decoration. Ht.: 19.8 cm. Signed "E. Gallé."

238 *Dragonflies* Cup (Coupe *Libellules*),c.1904. Multi-layered glass with engraved decoration. Ht.: 14.5 cm. Signed "Gallé / 1904."

239 *Dragonflies Cup* (Coupe *Libellules*), c.1904. Multi-layered glass with engraved decoration. Ht.: 14.1 cm. Signed "Gallé."

240 *Dragonflies* Cup (Coupe *Libellules*), c.1904. Multi-layered glass with engraved decoration. Ht.: 17 cm.

237



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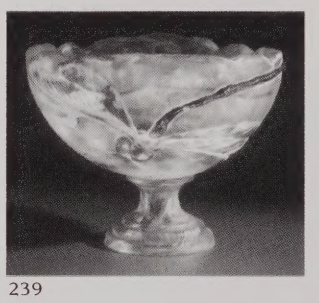

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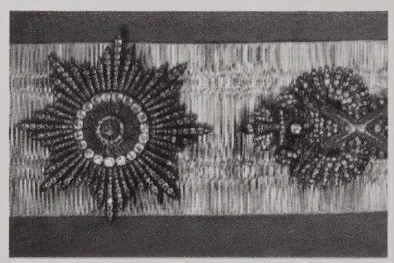
240

MISCELLANEOUS

241 *Order of St. Andrew* (Russian). Stolen from an exhibition at the Royal Danish Arsenal Museum in Copenhagen on January 6, 2005.



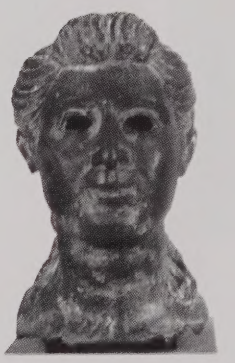
241

ROMAN ANTIQUITIES

The following works of art were stolen from the Australian National University, Canberra, Australia on December 7, 2004. Interpol no. 20041218490:

242 *Head of a Woman* (late first century B.C.). Bronze. Ht: 13.4 cm.

243 *Vase* (second century A.D.). Redware. Ht.: 21.9 cm. The vase has twisted handles and molded erotic themes.



242

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244

PRE-COLUMBIAN ART

244 *Fragment of statue* (Mayan, 600-900 DC). Limestone. Ht.: 1.2 M. The frontal part represents the lower extremities of a person in loincloth and socks. The fragment has eight compound glyphs, distributed in two columns and four files. Stolen from the archeological site of Yaxhá in Guatemala. Interpol no. 20050304799.

RECOVERED ART

PAINTINGS

5

5 PABLO RUIZ Y PICASSO (Spanish, 1881-1973). *Nature Morte à la charlotte (Still Life with Charlotte)*, 1924. Oil on canvas. 54 x 65 cm. *L04.906. Reported missing from a restoration workshop of the Pompidou Centre in Paris after a routine inventory check in May 2004. The painting had last been seen on January 12, 2004. Recovered by police in the home of a drug dealer in the outskirts of Paris on April 6, 2005. According to French police, the painting was stolen by another drug dealer, who was given access to the restoration workshop by a security guard.

6

6 PEDRO FIGARI (Uruguayan, 1861-1938). *Corrida de Toros*. Oil on board. 33 x 35 cm. *L98.780. Stolen from the residence of Mr. Santiago Luis Sanchez Elia in Buenos Aires, Argentina in 1997. Soon after the theft, the painting was sold at auction in Uruguay to a good-faith purchaser, who consigned it to Christie's, New York in 2003. The Art Loss Register spotted the work in the auction catalogue and notified the authorities. On May 10, 2005, the painting was formally returned to the Argentine government, which will return it to the original owner.

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*Numbering for the year 2004 Cumulative Index of Recovered Art began with *IFAR Journal*, Vol. 7, no.1.

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THURSDAY, SEPTEMBER 29, 2005

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148

149

STOLEN ART

148 PIERRE-AUGUSTE RENOIR (French, 1841-1919). *Tête de fillette.* 20.5 x 16 cm. Stolen in a daytime robbery on March 29, 2005 in Paris from Tajan's auction house, where it was scheduled to be sold on March 31.

149 JEAN-FRANÇOIS MILLET (French, 1814-1875). *Portrait of an Anonymous Man.* Oil on canvas. 40.5 x 32.7 cm. *L05.05. Stolen from the Musée des Beaux-Arts, Reims on December 13, 2004. In the late morning, a thief distracted two guards while his accomplice removed the painting from its frame.

153

153 JACOB WABEN (Dutch, 17th century). *Vanitas,* 1622. Oil on canvas. 131 x 151 cm. Inv. no. 00237. *L05.41 One of two dozen paintings and works on paper along with numerous silver objects stolen from the Westfries Museum in Hoorn, The Netherlands on January 9, 2005. See also items 150-168 and 206-207 on pp. 62-64 and 69.

The following are two of 13 objects by Emile Gallé (French 1846-1904) that were stolen from the Musée de la Fondation Neumann in Gingins, Switzerland on October 27, 2004. *N04.273. Interpol no. 2004101632. See also items 229-241 on pp. 73 and 74.

235

235 *Dragonflies Cup* (Coupe *Libellules*), c.1904. Multi-layered glass. Ht.: 19 cm. Signed "Gallé 1904."

236

236 Two-handled vase *Glycine*, c.1898. Double-layered glass with metallic inclusions and bronze base. Ht.: 9.5 cm. Signed "Gallé."

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